

JAMES D. NEALON - 08/14/2018

5 - - - - - - - - - - - - - - - - - - x

6 CRISTA RAMOS, et al., :  
7 Plaintiffs, : Case No.  
8 v. : 3:18-cv-1554-EMC  
9 KIRSTJEN NIELSEN, et al., :  
10 Defendants :

15 Boston, Massachusetts

— 2 —

2

88

22

24 Pages 1 276

25 Report and Rev.

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2

3

August 14, 2018

4

9:04 a.m.

5

6 Videotaped Deposition of JAMES NEALON held  
7 at the law offices of SIDLEY AUSTIN, LLP, 60 State  
8 Street, 36th Floor, Boston, Massachusetts 02109,  
9 Pursuant to Notice, before Dana Welch,  
10 Certified Shorthand Reporter, Registered Professional  
11 Reporter, Certified Realtime Reporter, and Notary  
12 Public in and for the Commonwealth of Massachusetts.

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Epiq Court Reporting Solutions - Woodland Hills  
1-800-826-0277 [www.deposition.com](http://www.deposition.com)

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1 APP E A R A N C E S  
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25

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1 APPAREANCES CONTINUED  
2 ON BEHALF OF DEFENDANTS:  
3 ADAM KIRSCHNER, ESQUIRE  
4 KEVIN SNELL, ESQUIRE  
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22 Also present:  
23 Bob Giannini, Videographer  
24  
25

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## I N D E X

2 WITNESS:

3 JAMES D. NEALON

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5 EXAMINATION: PAGE:

6 BY MS. MacLEAN 11

7 EXHIBITS MARKED:

8 NO. DESCRIPTION PAGE:

9 Exhibit 29, Amended Notice of subpoena to 20

10 Testify to James D. Nealon

11 Exhibit 30, DHS-001-659-000630 - 631 58

12 Exhibit 31, E-mail dated Thursday, May 18, 64

13 2017, 2:45 p.m. from Kathy Kovarik

14 Exhibit 32, DHS-001-659-000035 - 77 82

15 Exhibit 33, DHS-001-659-000459 - 460 86

16 Exhibit 34, E-mail dated Monday, May 14, 134  
17 2018, 3:55 p.m.

18 Exhibit 35, NewsRoom article, 5/8/18 152

19 Washington Post

20 Exhibit 36, E-mail dated Saturday, July 8, 180  
21 2017 from Kovarik, Subject Letter to

22 Secretary of State about TPS

23 Exhibit 37, DHS-001-659-000607 - 609 182

24 Exhibit 38, AR-HAITI-00000001 - 3 184

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5		Exhibit 40, DHS_RFPD_00000040	206
6		Exhibit 41, NewsRoom article dated May 10,	209
7		2018	
8		Exhibit 42, DHS_RFPD_00000953 - 954	228
9		Exhibit 43, DHS-RFPD-00000986	231
10		Exhibit 44, USCIS_RFPD_00000055 - 58	233
11		Exhibit 45, E-mail from Briana Petyo to	235
12		Kelbi Culwell, 10/10/17	
13		Exhibit 46, DHS-001-000515 - 521	240
14		Exhibit 47, E-mail dated July 14, 2017	243
15		from James McCament to Tracy Renaud	
16		Exhibit 48, DHS-001-659-000660 - 662	251
17		Exhibit 49, AR-SUDAN-00000028 - 39	251
18		Exhibit 50, DHS_RFPD_00001071	256
19		Exhibit 51, The Washington Post article	261
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21		pressure....,	
22		Exhibit 52, DHS-001-659-000856 - 860	264
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4	Exhibit 7, DHS_RFPD_00001250 - 1253	253
5	Exhibit 12, DHS_RFPD_00000010 - 12	193
6	Exhibit 14, DHS-001-659-000087	171
7	Exhibit 18, E-mail from Kathy Kovarik	66
8	dated November 3, 2017, 2:45:16 p.m.	
9	Exhibit 25, DHS_RFPD_00001322 - 1324	257
10	Exhibit 28, E-mail dated 10/16/17 from	259
11	Kovarik to Cissna	

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20	Exhibits retained by reporter for attachment to	
21	transcript.	
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1	P R O C E E D I N G S	08:35:08
2	THE VIDEOGRAPHER: Good morning. We are	09:04:32
3	on the record. This is the video operator	09:04:34
4	speaking, Bob Giannini, with court reporter, Dana	09:04:36
5	Welch, with Epic Court Reporting. Today's date is	09:04:40
6	August 14th, 2018, and the time is 9:04 a.m. We	09:04:43
7	are here at the offices of Sidley Austin LLP	09:04:48
8	located at 60 State Street, Boston, Massachusetts	09:04:52
9	to take the videotaped deposition of James Nealon	09:04:55
10	in the matter of Crista Ramos, et al., versus	09:05:00
11	Kirstjen Nielsen, et al., Case Number	09:05:05
12	3:18-CV-1554-EMC.	09:05:12
13	Will counsel please state their appearance	09:05:13
14	for the record.	09:05:17
15	MS. MacLEAN: Emilou MacLean for the	09:05:18
16	plaintiff.	09:05:21
17	MS. FISHFELD: Jessica Fishfeld for the	09:05:21
18	plaintiff.	09:05:24
19	MR. KIRSCHNER: Adam Kirschner for the	09:05:24
20	defendant.	09:05:27
21	MR. SNELL: Kevin Snell for the defendant.	09:05:27
22	MS. AFANEH: Tahani Afaneh for the	09:05:27
23	defendant.	09:05:28
24	THE VIDEOGRAPHER: Okay. Will the court	09:05:28
25	reporter please swear in the witness.	09:05:30

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1	JAMES D. NEALON,	09:05:39
2	having been first duly sworn on oath,	09:05:39
3	was examined and testified as follows:	09:05:39
4	EXAMINATION	09:05:39
5	BY MS. MacLEAN:	09:05:40
6	Q. Ambassador Nealon, could you please state	09:05:41
7	your name and spell it for the record.	09:05:45
8	A. Sure. My name is James D. Nealon. The	09:05:46
9	last name is N-e-a-l-o-n.	09:05:50
10	Q. Is it all right if I address you as	09:05:50
11	Ambassador Nealon?	09:05:53
12	A. You can call me James or Ambassador,	09:05:55
13	whatever you want to call me.	09:05:58
14	Q. Thank you.	09:05:59
15	Have you ever been deposed before,	09:06:00
16	Ambassador Nealon?	09:06:01
17	A. I have.	09:06:02
18	Q. When were you deposed previously?	09:06:02
19	A. I was previously deposed in a DACA case	09:06:04
20	sometime in the last nine months or so. I don't	09:06:07
21	recall the specific date.	09:06:09
22	Q. Had you been deposed before that?	09:06:10
23	A. I had not.	09:06:12
24	Q. So although you've done this before, and	09:06:13
25	fairly recently, I'm just going to go through some	09:06:13

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1 basic ground rules. Although this deposition is 09:06:13  
2 being held in the informality of this office, 09:06:25  
3 you're under oath and your testimony here today 09:06:27  
4 will have the same force and effect and be subject 09:06:28  
5 to the same penalties as if you were testifying in 09:06:30  
6 a courtroom before a judge. 09:06:33

7 Do you understand that? 09:06:35

8 A. I do. 09:06:36

9 Q. The court reporter has the authority to 09:06:36  
10 give you the oath, and the oath is an oath to tell 09:06:38  
11 the truth, the whole truth, and nothing but the 09:06:40  
12 truth. 09:06:45

13 Do you understand that? 09:06:45

14 A. I do. 09:06:45

15 Q. I'm going to be asking you some questions, 09:06:45  
16 and you'll obviously be answering those questions. 09:06:46  
17 Listen to the questions carefully. If you don't 09:06:49  
18 understand the question, please let me know and I 09:06:52  
19 will be happy to rephrase the question. If you 09:06:54  
20 answer the question, I'm going to assume that you 09:06:56  
21 understand what the question is. 09:06:58

22 Do you understand that? 09:07:00

23 A. I do. 09:07:00

24 Q. Both my questions and your answers will be 09:07:01  
25 taken down by the court reporter; therefore, it's 09:07:04

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1 important to verbalize your answers. So we have a 09:07:07  
2 tendency sometimes to say um-hum or huh-uh, and so 09:07:10  
3 if you do that or nod your head, I may ask you to 09:07:13  
4 verbalize what you're saying. 09:07:17

5 Do you understand that? 09:07:19

6 A. I do. 09:07:20

7 Q. If I -- it's necessary in a deposition 09:07:20  
8 that only one person is speaking at a time because 09:07:26  
9 otherwise, it's very difficult for the court 09:07:30  
10 reporter. So I'll try to wait until you've 09:07:32  
11 finished answering a question in order to ask 09:07:35  
12 another question, and I would appreciate if you 09:07:38  
13 would also do the same. 09:07:41

14 And your lawyer may be making objections. 09:07:43  
15 Although you are still required to answer the 09:07:48  
16 question unless your lawyer specifically instructs 09:07:51  
17 you to do otherwise, you obviously still have the 09:07:55  
18 authority to determine whether you're going to 09:07:57  
19 answer a question or not, but a typical objection 09:07:59  
20 does not suggest that you should not answer the 09:08:03  
21 question. 09:08:05

22 Do you understand that? 09:08:06

23 A. Not completely. 09:08:06

24 Q. So your lawyer may say "objection" and 09:08:08  
25 state some grounds for an objection. You still 09:08:11

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1 should answer the question in those cases. And you 09:08:14  
2 can clarify if needed. But if there's a question 09:08:18  
3 that your lawyer identifies would be protected by 09:08:21  
4 privilege, your lawyer may say "I instruct you not 09:08:25  
5 to answer this question," which is a different kind 09:08:29  
6 of objection. 09:08:30

7 Does that make sense? 09:08:31

8 A. Some sense. 09:08:33

9 Q. So essentially, if there is an objection 09:08:34  
10 that would allow you to be protected from answering 09:08:38  
11 a question, he will specifically identify that, and 09:08:47  
12 otherwise, he'll make the objection so that there 09:08:49  
13 is an objection that is on the record for later on, 09:08:51  
14 but it doesn't -- it doesn't allow you to avoid 09:08:55  
15 answering the question, if that makes sense, a 09:09:00  
16 little bit more sense. 09:09:02

17 A. Thank you. 09:09:03

18 MR. KIRSCHNER: Just to clarify for the 09:09:05  
19 record, just to not give Ambassador Nealon a 09:09:06  
20 misimpression, you're always welcome to ask for 09:09:11  
21 clarification from the questioner and so it's 09:09:16  
22 not -- so I just want to make it clear that I can 09:09:22  
23 object and I can instruct you not to answer, and if 09:09:25  
24 I make an objection that's not instructing you not 09:09:28  
25 to answer, it doesn't mean that you're not free 09:09:30

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1	then to ask for clarification from the counsel.	09:09:32
2	THE WITNESS: Thank you.	09:09:35
3	Q. Yes. And that's very welcome, too. If	09:09:36
4	you don't understand a question, please do ask for	09:09:39
5	a clarification.	09:09:41
6	A. Okay.	09:09:42
7	Q. Also if at any point after you've answered	09:09:44
8	a question or provided information, you would like	09:09:46
9	to provide any additional information or	09:09:48
10	clarification for a prior question, including after	09:09:50
11	a break, you should feel free to do so and just let	09:09:53
12	me know.	09:09:56
13	A. Okay.	09:09:56
14	Q. When the deposition is finished, all of	09:09:58
15	the questions and all of your answers will be typed	09:10:00
16	up into a transcript of the deposition. It will be	09:10:02
17	made available for you to read, review, and	09:10:06
18	ultimately sign.	09:10:09
19	If you need a break for any reason, and we	09:10:11
20	will all need breaks over the course of the day,	09:10:14
21	please let me know. The only time I might hold off	09:10:17
22	on a break is if there's a question that's pending,	09:10:21
23	but, otherwise, definitely this is a marathon, not	09:10:24
24	a sprint, so we'll have time for some breaks.	09:10:26
25	Do you understand everything that I've	09:10:30

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1	explained so far?	09:10:31
2	A. I do.	09:10:32
3	Q. Do you have any questions?	09:10:33
4	A. I don't.	09:10:33
5	Q. Is there any reason why you're unable to	09:10:34
6	provide truthful testimony today?	09:10:37
7	A. There isn't.	09:10:38
8	Q. Have you taken any medication in the last	09:10:39
9	24 hours that would prevent you from giving your	09:10:42
10	best and most truthful testimony?	09:10:44
11	A. I have not.	09:10:46
12	Q. Have you had any alcohol in the last	09:10:47
13	24 hours that would prevent you from giving your	09:10:49
14	best and most truthful information today?	09:10:51
15	A. No.	09:10:53
16	Q. Okay. Do you understand that your	09:10:54
17	deposition is connected to the Ramos versus Nielsen	09:10:56
18	lawsuit?	09:11:04
19	A. I do.	09:11:04
20	Q. Before today's deposition, were you aware	09:11:05
21	of the lawsuit?	09:11:07
22	A. Before today?	09:11:08
23	Q. Before today, yes.	09:11:11
24	A. I became aware of the lawsuit when I got	09:11:12
25	the subpoena.	09:11:14

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1	Q. And you had not been aware of the lawsuit	09:11:14
2	prior -- in advance of that?	09:11:18
3	A. I knew that there were lawsuits pending,	09:11:18
4	but I wasn't aware of this specific lawsuit, no.	09:11:19
5	Q. Okay. What did you know about the	09:11:22
6	lawsuits that were pending?	09:11:24
7	A. Just that there were lawsuits being	09:11:25
8	brought against the Department of Homeland Security	09:11:27
9	over TPS, that's all I knew.	09:11:29
10	Q. And do you have more information now about	09:11:31
11	the Ramos versus Nielsen lawsuit?	09:11:33
12	A. No, not really.	09:11:36
13	Q. So do you know the grounds on which the	09:11:40
14	challenge to the TPS terminations is based on the	09:11:44
15	lawsuit?	09:11:47
16	A. I read the subpoena.	09:11:48
17	Q. Aside from your attorney, have you talked	09:11:49
18	to anyone else about these lawsuits?	09:11:51
19	A. I have not.	09:11:52
20	Q. Have you done anything to prepare for the	09:12:00
21	deposition today?	09:12:02
22	A. I met with these attorneys yesterday.	09:12:03
23	Q. How long did you spend speaking with the	09:12:04
24	attorneys?	09:12:06
25	A. I believe we were together about four	09:12:06

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1	hours.	09:12:08
2	Q. Have you reviewed any documents in	09:12:08
3	preparation for the testimony today?	09:12:16
4	A. We did.	09:12:13
5	Q. What were the documents that you reviewed?	09:12:13
6	A. If I recall correctly, there were -- there	09:12:14
7	was a letter from Deputy Secretary of State	09:12:19
8	Sullivan about TPS for Sudan. There was a letter	09:12:22
9	from Secretary Tillerson to DHS regarding TPS for	09:12:28
10	Central American countries and Haiti. I reviewed a	09:12:35
11	memo that I wrote to Acting Secretary Duke at her	09:12:41
12	request about -- regarding TPS. And I believe I	09:12:46
13	reviewed country conditions, the country conditions	09:12:55
14	memos for Central American countries.	09:12:57
15	Q. The country conditions memos that you	09:13:00
16	reviewed, were they the RAIO country conditions	09:13:03
17	memos?	09:13:05
18	A. I'm not sure what RAIO means.	09:13:05
19	Q. So RAIO is the research arm that produces	09:13:07
20	the TPS considerations reports; and then there's a	09:13:10
21	TPS decision memo that's produced by USCIS.	09:13:12
22	A. I reviewed -- I believe I reviewed the	09:13:18
23	country conditions memo from the Department of	09:13:21
24	State.	09:13:22
25	Q. Okay.	09:13:23

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1	THE WITNESS: Is that correct?	09:13:24
2	MR. KIRSCHNER: Just to clarify, I think	09:13:27
3	he's referring to -- Ambassador Nealon is referring	09:13:29
4	to the State Department country condition	09:13:33
5	assessment.	09:13:34
6	THE WITNESS: Correct.	09:13:35
7	MR. KIRSCHNER: Of El Salvador, as opposed	09:13:37
8	to any RAIO reports.	09:13:42
9	MS. MacLEAN: Thank you for the	09:13:47
10	clarification.	09:13:48
11	Q. Do you know if the letters that you	09:13:48
12	reviewed from Deputy -- the letter that you	09:13:50
13	reviewed from Deputy Secretary of State Sullivan	09:13:52
14	regarding Sudan was the final letter that was	09:13:55
15	submitted to DHS?	09:13:57
16	A. I -- I don't know if it was a final	09:14:01
17	letter.	09:14:02
18	Q. Okay.	09:14:03
19	MR. KIRSCHNER: I -- I will represent that	09:14:03
20	the documents he identified are part of the	09:14:04
21	administrative records in this case.	09:14:06
22	MS. MacLEAN: Is it -- and just to -- for	09:14:10
23	further clarification, is part of the	09:14:11
24	administrative record that has been produced in	09:14:14
25	full?	09:14:16

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1	MR. KIRSCHNER: The documents that have	09:14:16
2	been produced to plaintiffs.	09:14:17
3	MS. MacLEAN: Okay. Thank you.	09:14:21
4	Q. Did you review any additional documents	09:14:27
5	aside from the documents that your attorney	09:14:30
6	provided you when you met yesterday?	09:14:32
7	A. No.	09:14:34
8	Q. Okay. Did you do anything else to refresh	09:14:34
9	your recollection about your experience at DHS?	09:14:36
10	A. No.	09:14:38
11	Q. Okay. Did you prepare any notes in	09:14:38
12	preparation for your deposition?	09:14:43
13	A. I did not.	09:14:45
14	Q. Okay. Would you like a -- take a --	09:14:47
15	A. Keep going.	09:15:02
16	Q. Okay. Okay.	09:15:03
17	MS. MacLEAN: Can we get exhibit --	09:15:03
18	exhibit tab 1, please.	09:15:05
19	Q. You reference --	09:15:08
20	(Exhibit 29, Amended Notice of subpoena to	09:15:08
21	Testify to James D. Nealon, marked for	09:15:28
22	identification.)	09:15:28
23	MS. MacLEAN: Can we go off the record for	09:15:28
24	one moment, please.	09:15:30
25	THE VIDEOGRAPHER: Time is 9:15. We are	09:15:32

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1	off the record.	09:15:34
2	(Proceedings interrupted at 9:15 a.m. and	09:15:35
3	reconvened at 9:17 a.m.)	09:15:35
4	THE VIDEOGRAPHER: Time is 9:17. We are	09:17:23
5	back on the record.	09:17:37
6	BY MS. MacLEAN:	09:17:38
7	Q. Ambassador Nealon, have you seen this	09:17:39
8	notice before?	09:17:41
9	A. This is the subpoena. Yes, I have seen	09:17:42
10	it.	09:17:44
11	Q. Great.	09:17:44
12	Can you tell me what your last	09:17:44
13	governmental position was?	09:17:46
14	A. My last government position was Assistant	09:17:47
15	Secretary of Homeland Security for International	09:17:53
16	Affairs, and I was simultaneously the Acting	09:17:56
17	Undersecretary for Policy.	09:18:00
18	Q. And when did you initially take that	09:18:01
19	position?	09:18:05
20	A. I took that job around July 10th of 2017.	09:18:05
21	Q. In that position, who did you report to?	09:18:13
22	A. I reported to the Secretary.	09:18:19
23	Q. And who -- how many people reported to	09:18:26
24	you?	09:18:33
25	A. About 150.	09:18:33

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1	Q. How many of those people were in	09:18:35
2	Washington, D.C.?	09:18:40
3	A. All but about five.	09:18:41
4	Q. How many of those people were engaged in	09:18:45
5	issues related to Temporary Protected Status?	09:18:55
6	A. Difficult for me to say, but maybe 20.	09:18:59
7	Q. Can you describe what your job	09:19:06
8	responsibilities were generally in this last	09:19:11
9	governmental position as Assistant Secretary for	09:19:14
10	International Affairs and Undersecretary for	09:19:19
11	Policy, if you differentiate?	09:19:21
12	A. Sure.	09:19:22
13	So the day job as Assistant Secretary of	09:19:25
14	International Affairs, I was the international face	09:19:28
15	of the Department with our international partners,	09:19:30
16	so Canada, Mexico, and a host of other countries	09:19:34
17	with which DHS has a -- has a relationship.	09:19:36
18	Q. And would you distinguish that from the	09:19:39
19	Undersecretary for Policy position?	09:19:44
20	A. Yes. So had there been a Senate-confirmed	09:19:45
21	Undersecretary for Policy, I as the Assistant	09:19:53
22	Secretary for International Affairs would have	09:19:57
23	reported to that person.	09:19:57
24	Q. And so what responsibilities did you take	09:19:59
25	up as Acting Undersecretary for Policy, if that's	09:20:03

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1 an accurate way to describe it, given there was 09:20:09  
2 not a confirmed person in that position? 09:20:13

3 A. So the policy shop, as they call it at 09:20:13  
4 DHS, is responsible for giving policy advice to the 09:20:16  
5 Secretary on the whole range of issues which she 09:20:19  
6 faces. 09:20:22

7 Q. And how would you describe -- based on how 09:20:22  
8 you're describing them, I'm going to differentiate 09:20:28  
9 those two positions. 09:20:31

10 How would you describe your three most 09:20:33  
11 important job responsibilities for the 09:20:35  
12 international affairs post? 09:20:36

13 A. For the international affairs post, I 09:20:37  
14 would say probably the most important duties -- the 09:20:40  
15 most important duty is the day-to-day maintenance 09:20:47  
16 of good relations with important international 09:20:50  
17 partners, countries like Canada and Mexico, for 09:20:52  
18 example, with whom we have a shared border, and 09:20:57  
19 obviously, a whole range of important bilateral 09:20:59  
20 issues. That's probably the biggest 09:21:02  
21 responsibility. 09:21:06

22 And then below that would be maintaining 09:21:06  
23 relationships with other key partners, countries 09:21:08  
24 like Great Britain, Australia, countries of the 09:21:12  
25 European Union, countries with whom we share 09:21:17

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1 information about travelers, for example, and  
2 countries with which we have a very robust  
3 bilateral cooperation.

09:21:22  
09:21:26  
09:21:29

4 Q. And for the policy position, what would  
5 you describe as your most important job  
6 responsibilities?

09:21:34  
09:21:36  
09:21:39

7 A. I would say the most important  
8 responsibility was managing the professional staff  
9 that did the legwork during the time I was there on  
10 things like DACA, TPS, executive orders and so  
11 forth.

09:21:39  
09:21:41  
09:21:45  
09:21:51  
09:21:58

12 Q. And you mentioned that there were  
13 approximately 20 people who were involved in TPS.  
14 You may not be able to name all of them, but can  
15 you go through the people who you would consider  
16 most involved in TPS determinations?

09:22:02  
09:22:04  
09:22:07  
09:22:10  
09:22:12

17 A. So you mean the people who worked for me?

09:22:14

18 Q. Who worked for you specifically.

09:22:17

19 A. So I would say that the key people would  
20 be my Chief of Staff, as well as the people who  
21 worked on geographical portfolios on the countries  
22 with which we had TPS. So for example, our Central  
23 American staff.

09:22:18  
09:22:21  
09:22:32  
09:22:39  
09:22:44

24 Q. And what is the name of your Chief of  
25 Staff?

09:22:44  
09:22:46

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1	A. Her name is Briana Petyo, P-e-t-y-o.	09:22:46
2	Q. And who were the people who were	09:22:52
3	responsible for the relevant geographical	09:22:54
4	portfolios?	09:22:57
5	A. I am terrible with names. So I may have	09:22:59
6	to think at a break and come --	09:23:04
7	Q. That's okay. Why don't we come back to	09:23:06
8	that question.	09:23:08
9	A. Yeah.	09:23:09
10	Q. Who did you communicate with most often in	09:23:09
11	your role as Assistant Secretary for International	09:23:15
12	Affairs, generally?	09:23:20
13	A. Could you clarify that question, please?	09:23:20
14	Q. Yes. In that role, were you communicating	09:23:24
15	regularly with the Secretary, were you	09:23:27
16	communicating regularly with the State Department,	09:23:30
17	were you communicating mostly internally within	09:23:33
18	your own staff, with people in foreign embassies,	09:23:36
19	diplomats, who would you consider to be your most	09:23:41
20	common contacts?	09:23:41
21	A. So without the slightest hint of being	09:23:41
22	flippant, the answer is yes. In other words, I was	09:23:45
23	communicating with all of those people regularly	09:23:48
24	and that is the nature of that job.	09:23:50
25	So in that job, you are the Secretary's	09:23:53

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1 primary advisor on international affairs, and as 09:23:56  
2 such, you manage a staff that provides information, 09:24:00  
3 and you also have to maintain relationships with 09:24:05  
4 the State Department, other members of the 09:24:08  
5 interagency, foreign embassies, and our own 09:24:13  
6 embassies downrange. 09:24:17

7 Q. And how would you answer that question for 09:24:22  
8 the policy position, who were the people or 09:24:23  
9 entities that you were most often in contact with 09:24:26  
10 for that position? 09:24:26

11 A. So for the policy job, that was more of an 09:24:26  
12 internal U.S. government job than an external 09:24:32  
13 outward-looking job. So I was most often in 09:24:36  
14 contact with my own staff, with other elements of 09:24:40  
15 DHS, with the Secretary and her staff, and then 09:24:45  
16 other elements of the interagency. 09:24:49

17 Q. And when did you leave that position? 09:24:53

18 A. I believe it was late February of 2018. 09:24:55

19 Q. What led you to leave that position? 09:24:59

20 A. Um, I decided I had to leave. I was a 09:25:02  
21 political appointee, and I was no longer a 09:25:13  
22 professional career government official, and as a 09:25:16  
23 political appointee, I believe very strongly that 09:25:21  
24 if you can't support the whole range of policies 09:25:25  
25 that you were appointed to support, then you are 09:25:31

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1 obligated to leave, so I left.

09:25:34

2 Q. Are you currently employed for the  
3 government or in any position?

09:25:36

09:25:38

4 A. I'm not.

09:25:40

5 Q. Okay. Can you step back from prior to  
6 your DHS position, what was your immediately  
7 preceding position prior to the DHS position?

09:25:40

09:25:53

09:25:57

8 A. So immediately before going to work for  
9 DHS, I was Ambassador to Honduras.

09:25:59

09:26:04

10 Q. And what was the time period in which you  
11 were Ambassador to Honduras?

09:26:07

09:26:09

12 A. I was Ambassador to Honduras from August  
13 of 2014 to June of 2017.

09:26:12

09:26:15

14 Q. Did you have a break in between the period  
15 when you ended your ambassadorship and when you  
16 started your position at DHS?

09:26:19

09:26:24

09:26:27

17 A. I was retired for three weeks. It was  
18 wonderful.

09:26:29

09:26:36

19 Q. Probably not quite long enough.

09:26:37

20 Who did you report to in your position as  
21 Ambassador?

09:26:39

09:26:41

22 A. That's a good question. On paper, you  
23 report to the President of the United States  
24 through the Secretary of State. In fact, in  
25 practice, ambassadors report to the Assistant

09:26:43

09:26:47

09:26:49

09:26:52

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1 Secretary of State for the geographic bureau in 09:26:58  
2 which their embassy sits. 09:27:02

3 So in my case, I was reporting to the 09:27:05  
4 Assistant Secretary of State for Western Hemisphere 09:27:07  
5 Affairs. 09:27:11

6 Q. And what would you describe as your main 09:27:11  
7 job responsibilities as Ambassador? 09:27:13

8 A. So an Ambassador's job is to be the 09:27:17  
9 President's personal representative in a country 09:27:21  
10 and to manage all U.S. government personnel and 09:27:23  
11 programs in that country. 09:27:26

12 Q. Did you engage at all in issues related to 09:27:31  
13 Temporary Protected Status while you were 09:27:37  
14 Ambassador to Honduras? 09:27:40

15 A. Yes. 09:27:41

16 Q. How did you engage in issues related to 09:27:41  
17 Temporary Protected Status? 09:27:44

18 A. So this is not a high definition memory, 09:27:46  
19 this is a lower definition memory, but I believe we 09:27:59  
20 went through the process of when a country comes up 09:28:02  
21 for renewal of Temporary Protected Status, the 09:28:04  
22 State Department asks the U.S. embassy in that 09:28:10  
23 country to weigh in and make a recommendation on 09:28:12  
24 whether the embassy believes that the TPS should be 09:28:15  
25 renewed or not. 09:28:18

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1 Q. Approximately when in the course of 09:28:23  
2 renewal process for TPS for an individual country 09:28:26  
3 that has been designated would you as Ambassador be 09:28:30  
4 asked to weigh in? 09:28:33

5 A. So as you know, the Secretary of Homeland 09:28:39  
6 Security has to render decisions at least 60 days 09:28:41  
7 before termination of TPS. So generally, embassies 09:28:44  
8 would be asked in the months leading up to that 09:28:47  
9 60-day window to weigh in and make a recommendation 09:28:51  
10 so that that feeds into the State Department's 09:28:53  
11 recommendation. 09:28:56

12 Q. Do you recall who in the State Department 09:28:57  
13 would request that you weigh in when you were 09:29:01  
14 Ambassador to Honduras? 09:29:04

15 A. So it would have been the Bureau of 09:29:05  
16 Western Hemisphere Affairs. I don't honestly 09:29:10  
17 recall who it was who asked us, but it would have 09:29:13  
18 been in the name of the Bureau of Western 09:29:15  
19 Hemisphere Affairs. 09:29:23

20 Q. And when you as Ambassador were asked to 09:29:23  
21 weigh in to the State Department about the renewal 09:29:25  
22 of TPS for Honduras, what would you do as 09:29:28  
23 Ambassador or what would the embassy do to respond 09:29:31  
24 to that request? 09:29:34

25 A. So, again, I have a very low definition 09:29:35

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1 recall of that particular process, but what an 09:29:39  
2 ambassador would do was convene a meeting, ask the 09:29:49  
3 embassy staff to write a report, make a 09:29:53  
4 recommendation, that report would come through my 09:29:56  
5 deputy to me so that I could sign off on it and 09:30:01  
6 send it up to the -- to the State Department. 09:30:04

7 Q. Would this be a formal report that the 09:30:06  
8 embassy would present? 09:30:09

9 A. Yes. 09:30:11

10 Q. When you were Ambassador, was this -- was 09:30:11  
11 TPS a high priority issue in Honduras or for the 09:30:16  
12 embassy? 09:30:20

13 A. So TPS is -- when I -- during the time I 09:30:21  
14 was in Honduras, TPS was very important to the 09:30:28  
15 Hondurans. But TPS was not something that we in 09:30:31  
16 the embassy thought about every day. It was just 09:30:37  
17 something that was there. And we were very busy 09:30:41  
18 doing other things. 09:30:45

19 So it's not something that's on -- on the 09:30:46  
20 radar screen every day. It comes onto the radar 09:30:49  
21 screen when it comes up for renewal. 09:30:54

22 Q. And following the creation of a report at 09:30:56  
23 the embassy, what would you do with that report as 09:31:02  
24 Ambassador? 09:31:05

25 A. Send it to the Bureau of Western 09:31:05

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1	Hemisphere Affairs in Washington.	09:31:11
2	Q. Typically, would there be a response from	09:31:12
3	the Bureau of Western Hemispheres to your report?	09:31:14
4	A. I don't recall in this specific case	09:31:19
5	whether there was a response or not.	09:31:21
6	Q. How many times was TPS up for renewal	09:31:22
7	while you were Ambassador to Honduras, if you	09:31:25
8	recall?	09:31:28
9	A. So, I believe, I believe it came up for	09:31:28
10	renewal twice while I was there, and as I say, I	09:31:30
11	have a vague memory of the process, which I believe	09:31:36
12	took place in 2016.	09:31:46
13	Q. Thank you.	09:31:48
14	And prior to your position as Ambassador,	09:31:52
15	what position did you hold?	09:31:55
16	A. Prior to -- to being Ambassador to	09:31:57
17	Honduras, I was the Civilian Deputy to the	09:32:02
18	Commander at U.S. Southern Command in Miami.	09:32:05
19	Q. What -- what was the time period in which	09:32:09
20	you were Civilian Deputy to the Commander at	09:32:12
21	SouthCom?	09:32:17
22	A. So summer of 2013 to summer of 2014. I	09:32:17
23	don't recall the precise dates.	09:32:20
24	Q. Was it approximately one year?	09:32:22
25	A. Yes.	09:32:23

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1	Q. Who did you report to when you were	09:32:24
2	Civilian Deputy to the Commander at SouthCom?	09:32:29
3	A. General John Kelly.	09:32:29
4	Q. What were your primary responsibilities in	09:32:32
5	that role?	09:32:34
6	A. So I was the Commander's foreign policy	09:32:35
7	advisor.	09:32:40
8	Q. What -- what were your more specific	09:32:42
9	responsibilities as the Commander's foreign policy	09:32:48
10	advisor?	09:32:51
11	A. So my job was to give the Commander and	09:32:52
12	other elements of the command advice on relations	09:32:56
13	with countries in the hemisphere. And then I also	09:33:01
14	had specific responsibilities regarding human	09:33:05
15	rights and public affairs, if I recall.	09:33:09
16	Q. Did TPS ever come up in your role as	09:33:13
17	Civilian Deputy to the Commander at SouthCom?	09:33:26
18	A. I don't recall it coming up.	09:33:26
19	Q. Prior to your position at SouthCom, what	09:33:28
20	position did you hold?	09:33:30
21	A. Prior to SouthCom, I was the Deputy Chief	09:33:36
22	of Mission, which is the number two person at the	09:33:39
23	U.S. embassy in Ottawa, Canada.	09:33:42
24	Q. What years did you hold that post?	09:33:44
25	A. That would have been summer of 2010 to	09:33:46

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1	summer of 2013.	09:33:49
2	Q. I imagine you also had three-week breaks	09:33:49
3	in between these positions?	09:33:52
4	A. Sometimes.	09:33:53
5	Q. What was the position that you held --	09:33:54
6	well, let me just ask, did TPS ever come up in your	09:33:56
7	position in Ottawa?	09:33:59
8	A. No.	09:34:00
9	Q. What was your position prior to that?	09:34:00
10	A. I was Deputy Chief of Mission at the	09:34:02
11	embassy in Lima, Peru.	09:34:05
12	Q. Do you recall the years that you held that	09:34:08
13	position?	09:34:10
14	A. 2007 to 2010.	09:34:10
15	Q. Did TPS ever come up in that position?	09:34:17
16	A. No.	09:34:19
17	Q. What was your position prior to that?	09:34:19
18	A. I was the Deputy Chief of Mission, and for	09:34:21
19	16 months, the Chargé D'Affaires, which is the	09:34:24
20	person who runs the embassy in the absence of an	09:34:27
21	ambassador in Montevideo, Uruguay.	09:34:31
22	Q. What years did you hold that post?	09:34:33
23	A. 2005 to 2007.	09:34:37
24	Q. Did TPS ever come in that position?	09:34:39
25	A. No.	09:34:41

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1	Q. What position did you hold prior to the	09:34:41
2	position in Montevideo?	09:34:43
3	A. I was Counselor for Public Affairs with	09:34:45
4	the embassy in Madrid.	09:34:49
5	Q. Do you recall the years that you held that	09:34:51
6	post?	09:34:56
7	A. 2002 to 2005.	09:34:56
8	Q. What year did you -- what post did you	09:34:59
9	hold prior to that?	09:35:07
10	A. I was Counselor for Public Affairs at the	09:35:08
11	embassy in Budapest, Hungary.	09:35:12
12	Q. What were the years you held that post?	09:35:15
13	A. 1999 to 2002.	09:35:17
14	Q. What position did you hold before that?	09:35:19
15	A. I worked in the Office of Human Resources	09:35:21
16	at the U.S. Information Agency in Washington.	09:35:28
17	Q. What years did you hold that post?	09:35:32
18	A. 1996 to 1999.	09:35:44
19	Q. So we'll -- we won't go further back than	09:35:46
20	that.	09:35:52
21	Is it fair to say that the first time that	09:35:53
22	you came across TPS as an area of concern in your	09:35:58
23	professional life was either in your post at	09:36:02
24	SouthCom, which you don't recall -- and in that	09:36:06
25	post, you don't recall how it came up, or in your	09:36:10

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1	post at the U.S. embassy in Honduras?	09:36:12
2	MR. KIRSCHNER: Objection, confusing.	09:36:16
3	Q. Is it fair to say that the -- that the	09:36:19
4	first time that TPS came up in your professional	09:36:24
5	life was definitely the --	09:36:28
6	MS. MacLEAN: Sorry. Let me rephrase	09:36:32
7	that.	09:36:34
8	Q. The -- is it fair to say that the first	09:36:34
9	time that you recall that TPS was definitely an	09:36:36
10	area of concern in your professional life was in	09:36:39
11	the post that you held as Ambassador to Honduras?	09:36:41
12	A. The first time I recall dealing with TPS	09:36:45
13	was as Ambassador to Honduras.	09:36:49
14	Q. Thank you.	09:36:50
15	So let's go back to your position at DHS	09:36:58
16	starting in July of 2016. Did you have --	09:37:00
17	A. '17.	09:37:05
18	Q. 2017.	09:37:06
19	Did you -- thank you for the	09:37:08
20	clarification.	09:37:12
21	Did you have any training when you entered	09:37:13
22	that post?	09:37:15
23	A. I believe there was a day or a day and a	09:37:16
24	half of orientation, this is DHS kind of thing.	09:37:19
25	Q. Do you recall what was included in that	09:37:23

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1 training, generally?

09:37:28

2 A. It was the kind of training that every new  
3 employee to DHS receives, so talked about the  
4 leadership and the structure and the mission of the  
5 Department.

09:37:29

09:37:33

09:37:37

09:37:40

6 Q. Do you recall ever having any training or  
7 guidance with regard to TPS when you entered your  
8 post at DHS?

09:37:40

09:37:43

09:37:46

9 A. No.

09:37:49

10 Q. So I wanted to go now to a discussion  
11 generally about the way that decisions are made  
12 about the possible renewal or termination of TPS  
13 when a country has already been designated.

09:37:50

09:37:56

09:37:59

09:38:04

14 I understand that USCIS typically  
15 initiates the TPS determination process by  
16 soliciting a report from a research arm within  
17 USCIS called RAIO, R-A-I-O, and soliciting other  
18 input, including from the Department of State,  
19 drafting and revising a decision memo, and sending  
20 the decision memo with a recommendation or options  
21 to DHS for further review.

09:38:07

09:38:11

09:38:15

09:38:18

09:38:22

09:38:25

09:38:27

09:38:30

22 I know you were not working specifically  
23 within USCIS at that -- at the time that you were  
24 at DHS.

09:38:32

09:38:34

09:38:40

25 Is that your understanding of the process?

09:38:41

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1 MR. KIRSCHNER: Objection. Counsel is 09:38:43  
2 testifying. Could you phrase it as kind of a 09:38:44  
3 question for Ambassador Nealon? 09:38:47  
4 Q. Do you have an understanding of what the 09:38:51  
5 process is at USCIS prior to a decision memo being 09:38:53  
6 signed by the USCIS director and sent to the DHS -- 09:38:58  
7 sent to DHS for review? 09:39:03  
8 A. So, no, I don't have a granular 09:39:03  
9 understanding of what CIS's internal process is 09:39:06  
10 leading up to the production of a memo to the 09:39:11  
11 Secretary. 09:39:13  
12 Q. Okay. So what is your understanding 09:39:13  
13 generally to the extent that you know of what 09:39:15  
14 happens at USCIS prior to a decision memo being 09:39:19  
15 sent from USCIS to DHS? 09:39:23  
16 A. Just in very general terms, they're 09:39:25  
17 responsible for sending a -- a recommendation to 09:39:29  
18 the Secretary, and so they do their due diligence 09:39:31  
19 on country conditions and so forth in order to 09:39:34  
20 prepare that memo. But I don't have -- as I say, I 09:39:39  
21 don't have a granular understanding of what their 09:39:43  
22 internal process is. 09:39:45  
23 Q. Okay. Did you have any involvement with 09:39:46  
24 USCIS during their portion of the review of TPS for 09:39:48  
25 an individual country? 09:39:53

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1 A. I'm sure I did in that we would be 09:39:56  
2 together in meetings. I would talk occasionally 09:40:07  
3 with the Acting Director of USCIS, a person who was 09:40:14  
4 Acting Director during part of my tenure at DHS 09:40:20  
5 about TPS, but I wasn't involved in their 09:40:24  
6 preparation of their memo. 09:40:28

7 Q. Who was the Acting Director with whom you 09:40:29  
8 were in contact while you were at DHS? 09:40:32

9 A. His name is James McCament. 09:40:35

10 Q. And who else were you in contact with at 09:40:38  
11 USCIS during your time at DHS regarding TPS? 09:40:41

12 A. I would have been in touch later with the 09:40:45  
13 now Director of USCIS, Francis Cissna, and I would 09:40:48  
14 have been in contact with Jennifer Higgins, and 09:40:53  
15 probably others, but I don't recall specifically. 09:41:01

16 Q. You recalled meetings with USCIS regarding 09:41:03  
17 TPS. Can you recall which meetings you 09:41:06  
18 participated in with the USCIS regarding TPS? 09:41:10

19 A. Well, what I recall is that there were 09:41:13  
20 meetings about TPS, so I didn't meet specifically 09:41:15  
21 with CIS to talk about TPS, sorry for the initials, 09:41:18  
22 but we would be together in meetings at which TPS 09:41:29  
23 was discussed. 09:41:31

24 Q. Do you recall approximately how many 09:41:39  
25 meetings roughly you engaged in regarding TPS while 09:41:40

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1	at DHS?	09:41:44
2	A. No.	09:41:45
3	Q. How often would you say you interacted	09:41:45
4	with Mr. McCament regarding TPS while you were at	09:41:56
5	DHS?	09:42:01
6	A. I would hesitate to put a number on it,	09:42:02
7	because I would be making up a number. You know,	09:42:06
8	as necessary.	09:42:09
9	Q. I would imagine that there are months	09:42:10
10	where you would not communicate as regularly	09:42:16
11	because TPS was not as much a priority and there	09:42:19
12	would be months where you would communicate more.	09:42:22
13	Is that fair to say?	09:42:24
14	A. That's correct, that's fair to say.	09:42:25
15	Q. When TPS was a higher priority issue or	09:42:26
16	there were more pressing deadlines, how often would	09:42:29
17	you communicate with Mr. McCament regarding TPS,	09:42:32
18	roughly?	09:42:36
19	A. Couple of times a week.	09:42:37
20	Q. Okay. And I want to ask the same question	09:42:40
21	with regard to Mr. Cissna, when TPS was a higher	09:42:44
22	priority or there were more pressing deadlines,	09:42:48
23	about how often would you communicate with	09:42:51
24	Mr. Cissna?	09:42:54
25	A. Probably less often.	09:42:55

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1 Q. Why would you say less often than  
2 Mr. McCament?

09:42:56  
09:43:00

3 A. You know, I knew Mr. McCament better, we'd  
4 worked together for a longer period of time than  
5 I'd worked with Francis Cissna, and I just had a  
6 very easy relationship with him.

09:43:00  
09:43:06  
09:43:08  
09:43:11

7 Q. And after Mr. McCament finished his role  
8 as Acting Director of USCIS, what position did he  
9 take?

09:43:14  
09:43:19  
09:43:23

10 A. I believe he reverted to being the deputy  
11 director.

09:43:23  
09:43:27

12 Q. About how often would you communicate with  
13 Ms. Higgins when TPS was a higher priority issue  
14 for the Department?

09:43:27  
09:43:34  
09:43:39

15 A. You know, I don't want to give the  
16 impression that there was a regular cycle of  
17 meetings so that I could put a number on it.  
18 Everybody is very busy. I might have 12 or 15  
19 meetings in a day; they'll have 12 or 15 meetings  
20 in a day, so you tend to communicate as necessary  
21 rather than on some regular cycle.

09:43:39  
09:43:41  
09:43:43  
09:43:46  
09:43:49  
09:43:54  
09:43:56

22 Q. Did you communicate with Ms. Neubel  
23 Kovarik while you were at the Department?

09:43:58  
09:44:04

24 A. I know who she is. I did have contact  
25 with her, but I was not in regular contact with her

09:44:06  
09:44:08

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1 about TPS. Certainly, we were on e-mail chains and  
2 we were in meetings, but she is not someone that I  
3 would normally reach out to to discuss TPS.

09:44:10  
09:44:14  
09:44:17

4 Q. Did you know the role that she played with  
5 regard to TPS?

09:44:21  
09:44:26

6 A. I couldn't tell you specifically what her  
7 role was, no.

09:44:26  
09:44:29

8 Q. Did you understand that she had a role  
9 with regard to TPS?

09:44:29  
09:44:31

10 A. Yes.

09:44:32

11 Q. Okay. Did you know Robert Law while you  
12 were at DHS?

09:44:33  
09:44:37

13 A. I don't recall the name.

09:44:39

14 Q. Okay. Did you know Brandon Prelogar while  
15 you were at DHS?

09:44:39  
09:44:44

16 A. Again, I don't recall the name, sorry.

09:44:46

17 Q. That's okay. Okay. So we'll move on from  
18 USCIS. I imagine you have greater understanding of  
19 the process at DHS.

09:44:48  
09:44:51  
09:44:53

20 Can you walk me through at a high level  
21 your understanding of the process for a DHS review  
22 of a TPS designation for a country that has already  
23 been designated for TPS?

09:44:55  
09:45:00  
09:45:05  
09:45:11

24 A. Yeah. So I can walk you through what I  
25 observed.

09:45:14  
09:45:18

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1	So during Acting Secretary Duke's tenure,	09:45:20
2	she was a very active consumer of information about	09:45:27
3	TPS, and so she solicited written materials and --	09:45:32
4	and opinions from staff about TPS.	09:45:39
5	And then the more formal process, of	09:45:44
6	course, is that she would receive input directly	09:45:48
7	from the Department of State, from the Secretary of	09:45:51
8	State, and from the Director of USCIS, she would	09:45:54
9	receive that input in written form and then she	09:45:58
10	would make a decision.	09:46:00
11	It was a secretarial decision whether or	09:46:01
12	not to renew TPS or not.	09:46:04
13	Q. What kind of information did she seek in	09:46:06
14	order to make a determination with regard to TPS?	09:46:09
15	A. So what I observed is that she read	09:46:12
16	voraciously, so she read press reports, she read	09:46:17
17	intel reports, she read outside analyses provided	09:46:23
18	by civil society, and then she solicited oral	09:46:29
19	opinions from staff members.	09:46:40
20	Q. Did she directly seek the information that	09:46:42
21	you're describing, or did she have staff under her	09:46:53
22	who were collecting this information?	09:46:57
23	A. What I recall is both.	09:46:59
24	Q. What is the kind of information that she	09:47:01
25	was directly seeking, in your memory?	09:47:04

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1       A. Um, she -- again, in my recollection, she  
2 was interested in the law, what does the law say.  
3 She was very interested in country conditions. She  
4 was very -- in the countries that had TPS.

5 She was very interested in U.S. policy  
6 implications, in other words, what are the  
7 implications of sending people back to these  
8 countries, how does that play for U.S. interests.

9                   She was very interested in the effect of  
10                  sending people back on -- on -- on migration, on  
11                  whether or not sending people back would have the  
12                  net effect of increasing rather than decreasing  
13                  migration.

14 So again, in my experience, she -- she  
15 cast a very wide net in terms of gathering  
16 information.

17 Q. And who were the staff underneath her who  
18 were all -- most responsible for collecting  
19 information with regard to TPS determinations?

20           A. Um, so I don't know specifically who on  
21 her inner staff was doing that for her. I don't  
22 know.

23 Q. From what you recall, she was quite  
24 hands-on, though, with regard to TPS  
25 determinations?

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1	A. She was.	09:48:29
2	Q. Okay. Were you at DHS when Secretary	09:48:30
3	Kelly was Secretary -- was DHS Secretary?	09:48:39
4	A. So briefly. So I came on board, as I	09:48:41
5	said, July 10th or 11th, right there sometime, and	09:48:45
6	I believe General Kelly went to the White House on	09:48:48
7	July 30th, I believe.	09:48:53
8	Q. And was TPS an issue at all during the	09:48:55
9	short tenure of then Secretary Kelly while you were	09:48:58
10	at DHS?	09:49:06
11	A. Yes, I believe so.	09:49:07
12	Q. What is the kind of information --	09:49:13
13	MS. MacLEAN: Or let me scratch that.	09:49:16
14	Q. What would you describe as the process to	09:49:18
15	the extent that you know, and obviously it was	09:49:18
16	quite brief, when -- for TPS determinations when	09:49:21
17	Secretary Kelly was DHS Secretary?	09:49:23
18	A. So I don't recall that any TPS decisions	09:49:25
19	came to a head during the brief time that I	09:49:30
20	overlapped with him. They may have, but I don't	09:49:34
21	recall that they did.	09:49:36
22	Q. Do you recall TPS coming up at all as --	09:49:41
23	A. I do.	09:49:44
24	Q. -- when you were working -- sorry, just	09:49:45
25	let me finish the question.	09:49:48

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1	A. Sorry.	09:49:49
2	Q. Would you -- do you recall TPS coming up	09:49:50
3	as an issue while you were at DHS when Secretary	09:49:52
4	Kelly was Secretary?	09:49:56
5	A. Yes.	09:49:57
6	Q. In what way?	09:49:58
7	A. I recall discussing Haiti with him at one	09:50:00
8	point, and there may have been more general	09:50:07
9	discussions about TPS for other countries, but I	09:50:11
10	don't remember specifics.	09:50:16
11	Q. Okay. What do you recall about the	09:50:16
12	conversations with Secretary Kelly regarding the	09:50:18
13	TPS determination for Haiti?	09:50:22
14	MR. KIRSCHNER: Objection. To the extent	09:50:23
15	this is calling for internal government	09:50:26
16	deliberations, I would instruct you not to answer	09:50:29
17	under the deliberative process privilege.	09:50:32
18	MS. MacLEAN: So just obviously for the	09:50:36
19	record, and I think we're both clear on this, and I	09:50:38
20	think you probably are as well, this is an issue	09:50:40
21	that is outstanding where there is litigation, so	09:50:45
22	we will -- if you choose not to answer that	09:50:47
23	question, we'll hold off but may need another	09:50:49
24	deposition to follow up on that question and other	09:50:52
25	related questions where there is a deliberative	09:50:54

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1	process privilege asserted.	09:50:57
2	MR. KIRSCHNER: I will say, though, that	09:50:58
3	to the extent you can answer this question in ways	09:51:00
4	that do not implicate the internal government	09:51:03
5	deliberations, then feel free to answer.	09:51:06
6	A. I'm not a lawyer, so --	09:51:12
7	MR. KIRSCHNER: Well --	09:51:15
8	A. So I do recall a conversation with Kelly	09:51:16
9	about Haiti, but it -- it was not a decision	09:51:18
10	conversation. It was a discussion, it was a	09:51:25
11	conversation. So in that sense, I believe it was	09:51:27
12	deliberative, but...	09:51:30
13	MR. KIRSCHNER: Okay. I'll instruct you	09:51:34
14	not to answer about internal government	09:51:36
15	deliberations.	09:51:40
16	Q. Okay. You described your understanding of	09:51:41
17	how Secretary Duke was making decisions with regard	09:51:47
18	to TPS and how she consumed information, the kind	09:51:51
19	of information she sought, and how directly she was	09:51:53
20	involved in the TPS determination process.	09:51:56
21	What would you say with regard to	09:51:59
22	Secretary Kelly's overview of -- and oversight of	09:52:01
23	the TPS determination process to the extent that	09:52:07
24	you know?	09:52:09
25	A. You know, I only overlapped with him for	09:52:11

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1 -- for those three weeks, and as I say, I don't 09:52:15  
2 recall a TPS decision coming to a head during the 09:52:19  
3 time that we were together, so I don't have the 09:52:21  
4 same sense of Kelly's decision-making process that 09:52:25  
5 I have of Acting Secretary Duke's. 09:52:30

6 Q. Did you overlap with Secretary Nielsen 09:52:34  
7 while she was Secretary? 09:52:37

8 A. I did. 09:52:38

9 Q. Did you overlap with Secretary Nielsen 09:52:39  
10 while TPS decisions were being made? 09:52:44

11 A. Yes. 09:52:46

12 Q. How would you describe her oversight of 09:52:46  
13 the TPS decision-making process? 09:52:49

14 A. She's a very different Secretary than 09:52:52  
15 Acting Secretary Duke was, they're just different 09:52:58  
16 people with different personalities and different 09:53:01  
17 styles. 09:53:03

18 I would say that Secretary Nielsen started 09:53:08  
19 from a much more granular level of understanding of 09:53:11  
20 TPS because of her previous experience than did 09:53:16  
21 Acting Secretary Duke, who came out of a management 09:53:21  
22 background and not a policy background. So I would 09:53:24  
23 say that Secretary Nielsen, as I say, started at a 09:53:36  
24 higher level of understanding of TPS in general. 09:53:39

25 Q. What would you say her understanding of 09:53:41

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1 TPS was at that time or -- 09:53:45  
2 MS. MacLEAN: Scratch that. 09:53:49  
3 Q. Where would you say that she gained her 09:53:51  
4 understanding of TPS? 09:53:52  
5 A. I think from her previous experience in 09:53:53  
6 government, as well as her time as Secretary 09:53:56  
7 Kelly's Chief of Staff and then her time at the 09:54:00  
8 White House as Kelly's deputy Chief of Staff. 09:54:02  
9 Q. Could you describe her perspective of TPS 09:54:06  
10 to the extent that you know? 09:54:12  
11 A. No. I don't think I could do that. 09:54:19  
12 Q. You described Acting Secretary Duke as 09:54:21  
13 seeking substantial information from various 09:54:25  
14 sources both directly and indirectly, herself and 09:54:28  
15 through her staff, in the process of making a TPS 09:54:32  
16 determination. Would you describe Secretary 09:54:34  
17 Nielsen in the same way? 09:54:37  
18 A. So I didn't have the same level of 09:54:39  
19 visibility on whatever process Secretary Nielsen 09:54:41  
20 went through to prepare herself to make TPS 09:54:46  
21 decisions. But I did participate in meetings with 09:54:49  
22 her, with representatives of foreign countries who 09:54:54  
23 were lobbying her to extend TPS. I participated in 09:54:58  
24 meetings with her, this is Secretary Nielsen, in 09:55:04  
25 meetings with civil society and faith-based groups 09:55:07

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1 who were lobbying her to extend TPS. Our office 09:55:11  
2 provided, at her instruction, written materials 09:55:16  
3 that had come in from civil society and faith-based 09:55:22  
4 groups making a case for extension of TPS. We 09:55:26  
5 provided those documents to her staff so that she 09:55:30  
6 could read them. So there was a very active 09:55:33  
7 process. But I probably couldn't go any further in 09:55:37  
8 describing how she prepared herself to make those 09:55:42  
9 decisions. 09:55:45

10 Q. You said that you didn't have the same 09:55:46  
11 visibility into the process for Secretary Nielsen's 09:55:47  
12 TPS decision-making as you did for Acting Secretary 09:55:51  
13 Duke's decision making. Why would you say that is? 09:55:55

14 A. Well, I think it was just personalities, 09:55:58  
15 just the way that Acting Secretary Duke gathers 09:56:01  
16 information before making a decision is very 09:56:07  
17 verbal, very open, very solicitous, and Secretary 09:56:13  
18 Nielsen is simply a different personality. 09:56:20

19 Q. Who do you know to be involved in the TPS 09:56:22  
20 decision-making process at DHS? 09:56:28

21 MR. KIRSCHNER: Objection, vague. 09:56:31

22 Q. You can answer the question, if you 09:56:34  
23 understand it. 09:56:37

24 A. Well, I mean, it's a secretarial decision. 09:56:38  
25 So it's as simple as that. It's a secretarial 09:56:42

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1 decision, and various secretaries would go through 09:56:48  
2 their distinct processes to gather information 09:56:53  
3 before they made their decisions. So there's the 09:56:56  
4 formal process of the written materials that we've 09:56:59  
5 discussed, and then there's a less formal process 09:57:02  
6 of soliciting information and reading and talking 09:57:06  
7 and discussing. 09:57:09

8 Q. Are there people in particular at DHS who 09:57:13  
9 are more involved in the DHS TPS determination 09:57:16  
10 process? 09:57:22

11 MR. KIRSCHNER: Objection, vague. 09:57:22

12 Q. If you understand the question, you can 09:57:24  
13 answer it. If not, I can rephrase. 09:57:26

14 A. Yeah. So I think, again, it's a 09:57:29  
15 secretarial decision, so everyone else is simply 09:57:32  
16 giving advice, right? But the entities within DHS 09:57:37  
17 that were most concerned with TPS would be the 09:57:46  
18 Office of Policy, the Office of International 09:57:52  
19 Affairs, which deals with those countries that have 09:57:57  
20 TPS and USCIS, which administers TPS. 09:58:01

21 Q. Were there secretarial advisors who were 09:58:06  
22 also involved in the process? 09:58:09

23 A. Yes. 09:58:10

24 MR. KIRSCHNER: Objection. I was going to 09:58:11  
25 say objection, vague. The word "involved" is 09:58:13

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1	vague.	09:58:15
2	Q. Who were the secretarial advisors who were	09:58:16
3	involved in the process?	09:58:20
4	MR. KIRSCHNER: Again, objection, vague.	09:58:21
5	A. So again, there were a series of	09:58:23
6	decisions, so I'm painting with a bit of a broad	09:58:27
7	brush here. But on the Secretary's staff there are	09:58:31
8	counsellors who have portfolios, and the counsellor	09:58:39
9	who had the immigration portfolio was a gentleman	09:58:43
10	named Gene Hamilton. Of course, the Secretary's	09:58:47
11	Chief of Staff advised her on all things, on all	09:58:52
12	decisions. Yeah.	09:58:55
13	Q. Does the phrase "front office review" mean	09:59:03
14	anything to you?	09:59:10
15	A. Um, you know, as a longtime bureaucrat, I	09:59:10
16	assume that means that a document goes up to the	09:59:19
17	Secretary's office and gets reviewed by people in	09:59:22
18	the front office before it gets put in front of the	09:59:25
19	Secretary, but I'm not certain that that's a formal	09:59:27
20	technical term.	09:59:32
21	Q. Do you have an understanding of who is in	09:59:36
22	the DHS front office?	09:59:38
23	A. I have an understanding of who was in the	09:59:39
24	DHS front office when I was there.	09:59:42
25	Q. Who was in the DHS front office when you	09:59:45

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1	were there?	09:59:47
2	A. So there was a Secretary, there was a	09:59:48
3	deputy Secretary, there was a team of counsellors	09:59:50
4	which I just described, there was a Chief of Staff,	09:59:54
5	there was a deputy Chief of Staff, and then there	10:00:00
6	were a couple of aides, Coast Guard officers who	10:00:03
7	were sort of personal assistants to the Secretary.	10:00:07
8	There were office management specialists. Yeah, I	10:00:12
9	think that's the front office.	10:00:19
10	Q. You mentioned that there were counsellors	10:00:21
11	and that Mr. Hamilton was the counsellor to the	10:00:26
12	Secretary who was specifically tasked on	10:00:30
13	immigration. Did the deputy Secretary also have	10:00:33
14	counsellors?	10:00:36
15	A. The Deputy Secretary had a very small	10:00:36
16	staff. I don't recall if they were called	10:00:42
17	"counsellors" or what they were called, but there	10:00:44
18	were a couple of people who assisted her as well.	10:00:48
19	Q. Do you recall if the Deputy Secretary had	10:00:50
20	anyone in her staff who was tasked with immigration	10:00:53
21	issues?	10:00:57
22	A. I don't recall.	10:00:57
23	Q. So you may not know the answer to this	10:00:58
24	question; obviously, let me know if you don't. In	10:01:03
25	a front office review process for a TPS	10:01:07

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1 determination, if there were suggested changes or 10:01:09  
2 concerns about the USCIS decision memo, do you know 10:01:16  
3 how those changes or recommendations or revisions 10:01:20  
4 would be expressed? 10:01:23

5 A. No. 10:01:28

6 Q. Do you know if USCIS would have 10:01:29  
7 involvement in the review process after the 10:01:36  
8 decision memo is transmitted from the USCIS 10:01:42  
9 director to the DHS Secretary prior to the DHS 10:01:47  
10 Secretary's signature? 10:01:54

11 A. I'm sorry, could you repeat that? 10:01:56

12 Q. Yes. Do you know if USCIS had any 10:01:57  
13 involvement in the DHS decision-making process in 10:01:59  
14 between the period where the USCIS director signs 10:02:02  
15 off on the decision memo and the DHS Secretary 10:02:06  
16 makes a final decision? 10:02:12

17 MR. KIRSCHNER: Objection, vague, 10:02:13  
18 confusing. 10:02:15

19 A. You know, I don't have any direct insight 10:02:19  
20 into how the front office of DHS operated at that 10:02:22  
21 level of granularity, I just don't. 10:02:25

22 Q. Okay. Do you know how long the DHS review 10:02:28  
23 would typically take once the USCIS director 10:02:45  
24 transmits a signed decision memo to DHS? 10:02:49

25 A. No, because oftentimes deadlines -- 10:02:52

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1	timelines are driven by deadlines, so it would	10:03:02
2	depend on when the paperwork got to the front	10:03:05
3	office and when the decision was due.	10:03:08
4	Q. Are you familiar with the DHS office of	10:03:11
5	general counsel?	10:03:17
6	A. Yes.	10:03:17
7	Q. Do you know what the role was of the	10:03:18
8	Office of General Counsel in TPS determinations?	10:03:20
9	A. So the role of the Office of General	10:03:23
10	Counsel in general is to provide legal advice to	10:03:25
11	the Secretary.	10:03:28
12	Q. Did you have any engagement with the	10:03:29
13	Office of General Counsel regarding TPS while you	10:03:34
14	were at DHS?	10:03:37
15	A. Yes.	10:03:39
16	Q. What was your engagement, generally?	10:03:39
17	A. So generally speaking, representatives of	10:03:41
18	that office would be present in formal meetings	10:03:46
19	that took place where TPS was discussed.	10:03:49
20	Q. Did you have any other engagement with the	10:03:55
21	Office of General Counsel with regard to TPS?	10:03:58
22	A. Not that I recall.	10:03:59
23	Q. Did you have any engagement with the DHS	10:04:00
24	Deputy Secretary while you were at DHS with regard	10:04:05
25	to TPS?	10:04:08

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1	A. So there were various acting deputy	10:04:09
2	secretaries while I was there. So when I arrived,	10:04:16
3	Elaine Duke was the Deputy Secretary. When Kelly	10:04:20
4	left, she became Acting Secretary. Claire Grady	10:04:25
5	became the Acting Deputy. So -- I'm sorry. Could	10:04:32
6	you repeat the question?	10:04:39
7	Q. Sorry. Just to follow up on your	10:04:40
8	response. Was Claire Grady deputy -- acting --	10:04:44
9	well, was Claire Grady Acting Deputy Secretary	10:04:52
10	until the end of your tenure at DHS or until --	10:04:54
11	A. Yes.	10:04:58
12	Q. Yes.	10:04:58
13	When Acting Secretary Duke was no longer	10:04:58
14	an Acting Secretary?	10:05:01
15	A. Well, no. Can I --	10:05:03
16	Q. Please.	10:05:10
17	A. -- correct the record? That's correct.	10:05:10
18	When Secretary Nielsen was confirmed and came over,	10:05:12
19	Acting Secretary Duke reverted back to being the	10:05:16
20	Deputy Secretary and Claire Grady reverted back to	10:05:19
21	being the undersecretary for management.	10:05:23
22	Q. Did you have engagement with Ms. Grady	10:05:25
23	about TPS while you were at DHS?	10:05:29
24	A. Yes, in that she was present at meetings	10:05:32
25	where TPS was discussed, but I don't recall	10:05:34

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1	specific meetings with her to discuss TPS.	10:05:37
2	Q. Did you engage with Mr. Hamilton regarding	10:05:41
3	TPS while you were at DHS?	10:05:46
4	A. Yes.	10:05:48
5	Q. In what way did you engage with	10:05:49
6	Mr. Hamilton about TPS while you were at DHS?	10:05:52
7	A. Again, we would be present at the same	10:05:58
8	meetings where TPS was discussed.	10:06:00
9	Q. Did you have any individual conversations	10:06:00
10	outside of the meetings that you're describing with	10:06:00
11	Mr. Hamilton while you were at DHS?	10:06:24
12	MR. KIRSCHNER: Objection, confusing.	10:06:24
13	Q. While you were at DHS, outside of the	10:06:26
14	broader meetings that you're describing, did you	10:06:31
15	have any other conversations with Mr. Hamilton	10:06:34
16	regarding TPS?	10:06:38
17	A. I'm sure I did. I'm sure I had corridor	10:06:42
18	conversations and e-mail exchanges.	10:06:45
19	Q. There are, as I understand it, a couple of	10:06:48
20	counsellors to the Deputy Secretary at DHS. Do you	10:07:10
21	understand Kate Nichols -- do you know who Kate	10:07:20
22	Nichols is?	10:07:26
23	A. Yes.	10:07:26
24	Q. Who is Kate Nichols?	10:07:26
25	A. Again, I'm not certain of her title, but	10:07:29

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1	she acted like a counsellor to the Deputy	10:07:32
2	Secretary. I will say that people came and went	10:07:35
3	with some frequency in those jobs, so I don't have	10:07:38
4	any recollection of who was in those positions at	10:07:40
5	what time.	10:07:43
6	Q. Did you understand Ms. Nichols, apparently	10:07:43
7	also known as Ms. Alford, to have had any --	10:07:46
8	sorry -- did you understand Ms. Nichols to have a	10:07:54
9	role in the TPS determination process?	10:07:57
10	A. Not that I'm aware of.	10:07:59
11	Q. Was she present at any of the meetings	10:08:00
12	that you described where TPS was discussed?	10:08:04
13	A. You know, she probably was, because	10:08:07
14	typically the people who fill that job go where the	10:08:09
15	Deputy Secretary goes.	10:08:15
16	Q. Did you know Arex Avanni while you were at	10:08:20
17	DHS?	10:08:25
18	A. Yes.	10:08:26
19	Q. What do you understand Arex Avanni's role	10:08:27
20	to be?	10:08:29
21	A. He was also a counsellor to the Deputy	10:08:30
22	Secretary.	10:08:34
23	Q. Did you understand Mr. -- is it Mr.?	10:08:34
24	A. (Nodding head up and down.)	10:08:37
25	Q. -- Mr. Avanni to have a role with regard	10:08:38

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1	to TPS while you were at DHS?	10:08:41
2	A. Not that I'm aware of.	10:08:41
3	MS. MacLEAN: We'll mark this as	10:08:51
4	Exhibit 30.	10:08:53
5	(Exhibit 30, DHS-001-659-000630 - 631,	10:08:54
6	marked for identification.)	10:08:54
7	Q. So the document that we just marked as	10:09:10
8	Exhibit 30 is an e-mail, and I wonder if you could	10:09:21
9	just explain what this e-mail relates to.	10:09:24
10	MR. KIRSCHNER: Objection, calls for	10:09:29
11	speculation.	10:09:30
12	A. So this looks to be an e-mail from me to	10:09:43
13	my Chief of Staff asking her to participate in a	10:09:45
14	phone call that I'm not able to participate on	10:09:48
15	because I'm on my way to Australia. And the	10:09:50
16	subject is "DHS TPS coordination call." And I	10:09:53
17	really can't recall anything more than that.	10:09:58
18	Q. Were these -- was there a regular DHS TPS	10:10:00
19	coordination call, to your knowledge?	10:10:05
20	A. No.	10:10:06
21	Q. Was there a group of people who was known	10:10:07
22	to participate in a TPS coordination call at DHS?	10:10:12
23	A. So this call would have been organized	10:10:16
24	probably by someone in the Secretary's -- on the	10:10:21
25	Secretary's staff, someone in the DHS front office	10:10:25

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1 and they would have determined who they wanted on 10:10:28  
2 the call. So I don't see the original message, so 10:10:31  
3 I don't know who those people are. 10:10:38

4 Q. How would you know with an e-mail like 10:10:39  
5 this, generally, who was going to be included on 10:10:46  
6 that? 10:10:48

7 A. I would look at who the addressees on the 10:10:48  
8 e-mail were. 10:10:51

9 Q. While you were at DHS, do you recall there 10:10:52  
10 being multiple DHS TPS coordination calls? 10:10:57

11 A. I don't. 10:11:00

12 Q. In your recollection, who would be amongst 10:11:00  
13 the people who would be on -- 10:11:06

14 A. Actually, I do remember a call or two, 10:11:09  
15 yes. I do remember a call or two which this might 10:11:25  
16 refer to, in which there was an effort made to 10:11:32  
17 coordinate the interagency on TPS decisions. In 10:11:38  
18 other words, a decision was imminent, how is that 10:11:43  
19 decision going to be communicated, who is going to 10:11:47  
20 communicate it, what's the role of the various 10:11:51  
21 government departments. I think that's what this 10:11:53  
22 is referring to. 10:11:56

23 Q. And do you recall who the people are who 10:11:58  
24 are generally on those TPS coordination calls? 10:12:02

25 MR. KIRSCHNER: Objection, calls for 10:12:06

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1	speculation.	10:12:11
2	Q. Who might you expect to be on a TPS	10:12:11
3	coordination call at DHS, from the time that you	10:12:13
4	were there?	10:12:16
5	A. So I would be speculating, and I would	10:12:16
6	speculate as follows: so the Office of Policy, our	10:12:19
7	office would be on the call; someone representing	10:12:23
8	the Secretary's office would probably be on the	10:12:27
9	call; the call would probably be led by the	10:12:34
10	Assistant Secretary for Public Affairs, who's	10:12:37
11	responsible for the department's communications.	10:12:40
12	And then I would speculate that USCIS would be on	10:12:46
13	the call and perhaps others.	10:12:51
14	Q. So the press release that announced that	10:12:53
15	TPS for Sudan would be terminated was on	10:13:17
16	September 18th, 2017. This is October 23rd.	10:13:22
17	Let's come back to that if we need to.	10:13:42
18	Do you understand anything about the term	10:13:45
19	"decision package" when it is used in the context	10:13:55
20	of TPS?	10:13:59
21	A. No. But I would speculate that a decision	10:14:02
22	package would be the package of information that	10:14:09
23	gets put before the Secretary so that she can make	10:14:11
24	a decision. So there would be a decision memo and	10:14:16
25	then some supporting materials behind that.	10:14:20

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1	Q. What is generally included in the	10:14:23
2	materials that are presented to the DHS Secretary	10:14:26
3	for her to make a decision?	10:14:29
4	MR. KIRSCHNER: Objection, calls for	10:14:30
5	speculation, seeks facts not in evidence.	10:14:33
6	Q. You can answer the question to the extent	10:14:36
7	that you know.	10:14:38
8	A. So I mean, I don't know because I didn't	10:14:39
9	work in the front office, so I don't know what	10:14:44
10	would be put in front of her. But as I say,	10:14:46
11	normally, there would be a decision memo, yes-no,	10:14:49
12	and then supporting materials.	10:14:54
13	Q. Do you have any understanding of what the	10:14:56
14	supporting materials are that are put before the	10:14:59
15	DHS Secretary when she's making a decision with	10:15:02
16	regard to TPS?	10:15:04
17	MR. KIRSCHNER: Again, objection,	10:15:07
18	speculative.	10:15:09
19	A. I will speculate that the supporting	10:15:11
20	materials would be the communications from the	10:15:16
21	Secretary of State and the communications from	10:15:22
22	USCIS and any other internal communications that	10:15:27
23	her staff thought relevant.	10:15:30
24	Q. Are you aware of a clearance process with	10:15:33
25	regard to formal documents that are submitted for	10:15:39

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1 review or circulated internally within the  
2 Department? 10:15:43  
10:15:45

3 A. Yes. 10:15:46

4 MR. KIRSCHNER: I was going to say 10:15:46  
5 objection, lack of foundation. 10:15:48

6 Q. You can answer the question. 10:15:50

7 A. Yes. 10:15:52

8 Q. What do you know about the clearance 10:15:53  
9 process? 10:15:55

10 A. So there's actually a whole mechanism set 10:15:55  
11 up in every government Department to clear 10:16:01  
12 documents formally. And in DHS it's called the 10:16:03  
13 "Executive Secretary" or "Exec Sec" process. 10:16:08

14 Q. Can you describe to me what that process 10:16:12  
15 consisted of? 10:16:15

16 A. So I'm not an expert on that process, but 10:16:16  
17 as a user, if you want to get a document cleared 10:16:19  
18 through the Department, you submit it to the 10:16:23  
19 department's executive Secretary or the people who 10:16:29  
20 manage the paperwork for the Department, and then 10:16:32  
21 they are experts in how to do this and they know 10:16:36  
22 who needs to clear a document in order for it to 10:16:41  
23 move forward. So they manage that process, sending 10:16:43  
24 it out for clearance and then, you know, if there 10:16:48  
25 are changes or whatever, making those changes and 10:16:55

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1 then sending the document forward. 10:16:57

2 Q. What kinds of documents would need to go 10:16:59  
3 through the clearance process that you're 10:17:02  
4 describing? 10:17:06

5 A. Formal documents, memos, decisions, 10:17:07  
6 reports, that sort of thing. 10:17:17

7 Q. What is the purpose of the clearance 10:17:20  
8 process, in your understanding? 10:17:26

9 MR. KIRSCHNER: Objection, speculative. 10:17:28

10 A. So in a very large department like the 10:17:30  
11 Department of Homeland Security, there are lots of 10:17:37  
12 equities. There are lots of different elements 10:17:39  
13 that have -- that have a piece of almost anything 10:17:43  
14 that happens within the Department, so it's 10:17:50  
15 important that the Department speak with one voice 10:17:52  
16 to the extent possible, so the clearance process is 10:17:53  
17 meant to take all of that into account and come up 10:17:56  
18 with a product that speaks for the Department. 10:17:59

19 Q. Do you know if documents related to TPS 10:18:04  
20 went through the clearance process? 10:18:07

21 A. I don't know. 10:18:08

22 Q. Would the DHS policy office have an 10:18:09  
23 opportunity to review documents that were submitted 10:18:14  
24 through the clearance process? 10:18:16

25 A. If the executive Secretary had determined 10:18:19

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1	that the Office of Policy should have a say in that	10:18:23
2	document, yes.	10:18:27
3	MS. MacLEAN: So this will be Exhibit 31.	10:19:00
4	(Exhibit 31, E-mail dated Thursday, May 18,	10:19:04
5	2017, 2:45 p.m. from Kathy Kovarik, marked for	10:19:04
6	identification.)	10:19:05
7	Q. So Ambassador Nealon, I'll just give you a	10:19:05
8	moment to look at the document that we just marked	10:19:12
9	as Exhibit 31.	10:19:10
10	So obviously, there's quite a bit that's	10:19:54
11	redacted, so it's a little bit like Swiss cheese	10:19:56
12	and hard to make complete sense of this as will be	10:19:56
13	true with some of the other documents that we look	10:19:56
14	at today.	10:20:00
15	MR. KIRSCHNER: Objection, counsel is	10:20:00
16	testifying.	10:20:02
17	Q. But if you could just turn to what is	10:20:02
18	marked on the bottom right as page 107.	10:20:07
19	A. Yes.	10:20:10
20	Q. There's one e-mail that starts at the	10:20:10
21	middle of the page. Who are the people who are	10:20:17
22	listed on that e-mail, to the extent that you know?	10:20:20
23	A. I just see three people: Kathy Kovarik,	10:20:22
24	James McCament, and Tracy Renaud.	10:20:27
25	Q. And who is Tracy Renaud?	10:20:31

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1	A. I don't recall.	10:20:33
2	Q. So Kathy Neubel Kovarik asks the question	10:20:34
3	in this e-mail: "Are we now taking these FRNs to	10:20:38
4	OMB for clearance or just FYI?"	10:20:42
5	Do you understand in this e-mail what	10:20:46
6	"FRNs" would be?	10:20:48
7	A. No.	10:20:49
8	MR. KIRSCHNER: Objection, speculative. I	10:20:50
9	would note this is an e-mail that does not indicate	10:20:52
10	Ambassador Nealon on it, and it also predates	10:20:54
11	Ambassador Nealon's time at the Department of	10:20:57
12	Homeland Security.	10:21:00
13	Q. Do you understand what "OMB" would be in	10:21:00
14	this e-mail?	10:21:03
15	A. Office of Management and Budget.	10:21:04
16	Q. Well, the e-mail refers to a clearance	10:21:06
17	process. Would you think that that's the clearance	10:21:12
18	process of the type that you're describing from	10:21:17
19	this e-mail?	10:21:20
20	MR. KIRSCHNER: Objection, speculative,	10:21:20
21	lack of foundation.	10:21:24
22	A. Um, it occurs to me that FRNs are Federal	10:21:24
23	Register Notices and so I believe that the Office	10:21:31
24	of Management and Budget clears all notices that go	10:21:37
25	into the Federal Register. So the answer would be	10:21:41

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1 no, this is a different clearance process than an  
2 internal DHS clearance process.

10:21:44

3 Q. And what do you know about the OMB  
4 clearance process, to the extent that you know  
5 anything about that process?

10:21:48

6 A. I just told you everything I know about  
7 the OMB clearance process.

10:21:52

8 Q. Do you understand that Federal Register  
9 Notices are supposed to go through a clearance  
10 process by OMB?

10:21:54

11 A. That is my understanding -- my  
12 understanding is that OMB clears notices before  
13 they go into the Federal Register.

10:21:57

14 Q. Do you understand that to be a mandatory  
15 process?

10:22:03

16 A. That's my understanding, but -- it's my  
17 understanding.

10:22:05

18 Q. Okay. I'm just going to share with you an  
19 exhibit that was previously marked as -- looks like  
20 18. So this e-mail also is an e-mail exchange that  
21 I'm going to share with you, also includes some of  
22 the same people that were included in the previous  
23 e-mail exchange. I'm just going to ask you to look  
24 at the first e-mail in the chain, which is --  
25 begins at the bottom of page 142 and continues to

10:22:07

10:22:11

10:22:13

10:22:17

10:22:19

10:22:21

10:22:37

10:22:41

10:23:08

10:23:11

10:23:14

10:23:24

10:23:31

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1	the end of the document. Sorry. Continues to 143.	10:23:35
2	A. So I'm sorry, begin with the -- from Kathy	10:23:46
3	Kovarik at the bottom of 142?	10:23:52
4	Q. Yes. November 1st, 2017 at 11:17 p.m.	10:23:54
5	A. Yeah.	10:24:01
6	Q. If you could just read that e-mail to	10:24:01
7	yourself.	10:24:04
8	A. Okay.	10:24:30
9	Q. So the last paragraph of the e-mail before	10:24:31
10	she says "thank you for reviewing," Ms. Neubel	10:24:33
11	Kovarik writes, "I don't anticipate sending this	10:24:39
12	formally through the clearance process, but rather	10:24:41
13	after you provide your input and we amend, we'll	10:24:41
14	share with appropriate directorates for FYI before	10:24:45
15	getting D1 signature."	10:24:47
16	First, who do you understand "D1" to be?	10:24:49
17	A. The director of USCIS.	10:24:53
18	Q. And is the clearance process that's	10:24:57
19	described here similar to the clearance process	10:24:59
20	that you outlined, to your knowledge?	10:25:02
21	MR. KIRSCHNER: Objection, lack of	10:25:03
22	foundation, speculative. This is an e-mail	10:25:04
23	internal to USCIS or at least it appears to be.	10:25:07
24	A. Yes. I can't be certain what clearance	10:25:14
25	process she's referring to.	10:25:16

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1	Q. What is the document that she's describing	10:25:19
2	here?	10:25:22
3	MR. KIRSCHNER: Objection, speculative.	10:25:23
4	Q. To the extent you know what is the	10:26:08
5	document that's being described here?	10:26:10
6	A. So I'm reading the same e-mail that you	10:26:12
7	are. We have finalized the decision memo on	10:26:14
8	Haiti's TPS designation.	10:26:17
9	Q. So I'm going to jump to DHS policy in	10:26:19
10	particular. Can you describe what the role is of	10:26:43
11	DHS policy in TPS decision -- the TPS	10:26:47
12	decision-making process?	10:26:50
13	MR. KIRSCHNER: Objection, vague. It's	10:26:51
14	unclear what you mean by "DHS policy."	10:26:56
15	MS. MacLEAN: Fair point.	10:27:00
16	Q. How would you describe or what term would	10:27:01
17	you use to describe the unit that you were	10:27:07
18	overseeing?	10:27:09
19	A. The Office of Policy.	10:27:09
20	Q. The Office of Policy.	10:27:10
21	What was the role of the DHS Office of	10:27:12
22	Policy in the TPS decision-making process?	10:27:16
23	A. So we had a variety of roles in that	10:27:18
24	process. One was outreach to the countries	10:27:27
25	affected by TPS, so meetings with the Salvadorans	10:27:35

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1 and the Haitians, for example, the Hondurans. 10:27:42  
2 Outreach to civil society and faith-based groups 10:27:48  
3 who wanted to meet with the Department to make a 10:27:50  
4 case for the extension of TPS, outreach to other 10:27:52  
5 members of the interagency, particularly the State 10:28:03  
6 Department and then more informal and on at least 10:28:07  
7 one occasion formal advice to the Secretary, Acting 10:28:16  
8 Secretary about TPS. 10:28:21

9 Q. When would DHS policy -- sorry -- when 10:28:27  
10 would the DHS Office of Policy typically get 10:28:30  
11 engaged in a TPS review process? 10:28:32

12 MR. KIRSCHNER: Objection, vague, lack of 10:28:35  
13 foundation. 10:28:47

14 A. So we would typically get involved when it 10:28:47  
15 was time to get the Secretary ready to make a 10:28:50  
16 decision. So in the period leading up to that 10:28:55  
17 60-day window before the termination of a 10:29:00  
18 particular TPS. 10:29:04

19 Q. You described a period leading up to the 10:29:05  
20 Secretary making a decision, but obviously that 10:29:12  
21 period can be long, it could be a week before, a 10:29:15  
22 month before, three months before, and obviously, 10:29:19  
23 how the DHS Office of Policy would get involved 10:29:21  
24 would presumably vary depending on what the 10:29:25  
25 decision was and what issues were at play. Do you 10:29:27

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1 have a sense, though, generally whether the DHS 10:29:30  
2 Office of Policy would get involved a week before, 10:29:32  
3 two weeks before, a month before, a couple months 10:29:35  
4 before the Secretary would make a decision? 10:29:38

5 A. So -- so we would get involved -- would 10:29:40  
6 begin to get involved as necessary. So for 10:29:50  
7 example, the Salvadoran foreign minister would come 10:29:55  
8 to Washington and want to meet with the Secretary 10:29:58  
9 or meet with me. He did that regularly, not only 10:30:01  
10 geared to the timeline of TPS. So we would have 10:30:06  
11 meetings as necessary at any time that someone 10:30:13  
12 asked for a meeting. I don't recall ever turning 10:30:17  
13 down a meeting with someone regarding TPS. 10:30:20

14 Q. When you say you don't recall turning down 10:30:33  
15 a meeting with someone with regard to TPS, are you 10:30:33  
16 speaking specifically of foreign governments who 10:30:33  
17 are interested or are you speaking also internally 10:30:35  
18 of meetings that would be requested -- 10:30:36

19 A. I was referring to foreign governments and 10:30:38  
20 civil society and faith-based groups. 10:30:40

21 Q. Did you have standing meetings while you 10:30:44  
22 were head of the DHS Office of Policy? 10:30:52

23 MR. KIRSCHNER: Objection, vague. 10:30:57

24 A. Yes. 10:30:58

25 Q. What standing meetings did you have? 10:30:58

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1 A. So the Secretary would have a morning 10:31:01  
2 meeting every morning that he or she was in town. 10:31:07  
3 I would attend that. The Chief of Staff would have 10:31:13  
4 meetings a couple times a week, regular meetings 10:31:18  
5 for office and component heads, and I would attend 10:31:22  
6 those. 10:31:27

7 Q. Sorry, just to clarify, when you say the 10:31:27  
8 Chief of Staff would have regular meetings, do you 10:31:29  
9 mean -- 10:31:32

10 A. I'm sorry, the DHS Chief of Staff, 10:31:32  
11 Secretary's Chief of Staff, yes. 10:31:37

12 Q. How often would the DHS Chief of Staff 10:31:37  
13 have those meetings? 10:31:40

18 Q. Who would attend the morning meetings with 10:31:50  
19 the DHS Secretary when she was in town? 10:31:55

20           A. Um, the Secretary, her Chief of Staff,           10:31:58  
21 often the deputy Chief of Staff, often the Deputy           10:32:05  
22 Secretary, often a counsellor to the Deputy           10:32:10  
23 Secretary, usually one or more of the Secretary's           10:32:14  
24 counsellors, the undersecretaries, the acting legal           10:32:19  
25 counsel, an FBI representative, and some briefers.           10:32:28

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1	There may have been others.	10:32:40
2	Q. You didn't mention yourself, and I imagine	10:32:42
3	that you were at these meetings?	10:32:44
4	A. I was at these meetings.	10:32:45
5	Q. Are there other people who held similar	10:32:47
6	positions to you who were also at those meetings	10:32:50
7	who were heads of different units within DHS?	10:32:53
8	A. Yes. So this was not a large meeting, so	10:32:54
9	I was there in my capacity as the Acting	10:32:57
10	Undersecretary of Policy and so the other	10:33:00
11	undersecretaries were also invited to that meeting.	10:33:02
12	Q. How many other acting undersecretaries or	10:33:08
13	undersecretaries are there in the Department, to	10:33:12
14	your knowledge?	10:33:14
15	A. One, two, three -- four.	10:33:14
16	Q. What was the purpose of the meetings, the	10:33:20
17	morning meetings with the DHS Secretary?	10:33:30
18	A. Coordination.	10:33:32
19	Q. How long would those meetings usually	10:33:33
20	take?	10:33:36
21	A. It completely depended on what was going	10:33:36
22	on that day, what the Secretary's schedule was, but	10:33:41
23	a typical meeting would be about a half an hour.	10:33:46
24	Q. Who would set -- was there an agenda set	10:33:48
25	for these meetings?	10:33:51

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1	A. Yes. She would get briefed. It was a	10:33:52
2	briefing for the Secretary so that she had	10:33:57
3	situational awareness of what was going on in her	10:33:59
4	world as she started the day.	10:34:02
5	Q. Was there someone tasked to facilitate or	10:34:05
6	moderate these meetings?	10:34:08
7	A. Yes. There were -- there were briefers	10:34:09
8	who that was their job, they did this for a living.	10:34:13
9	Q. Okay. Do you recall if TPS ever came up	10:34:16
10	in any of these meetings?	10:34:20
11	A. I do.	10:34:21
12	Q. I'm going to ask you about the instances	10:34:23
13	where you recall TPS coming up at these meetings,	10:34:29
14	and they may come to you out of order, but about --	10:34:34
15	first of all, about how often or how many times do	10:34:37
16	you recall TPS coming up in these meetings?	10:34:41
17	A. I recall one specific meeting.	10:34:42
18	Q. What -- can you describe more or less when	10:34:49
19	that meeting took place?	10:34:52
20	A. Yes. This meeting took place in the	10:34:53
21	run-up to the Secretary's decision on Central	10:34:58
22	America.	10:35:08
23	Q. And when you say a run-up to the	10:35:08
24	Secretary's decision on TPS for Central America,	10:35:20
25	are there particular Central American countries	10:35:22

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1	that were at issue in this conversation?	10:35:24
2	A. I recall her at this meeting being very	10:35:25
3	interested in getting more information on El	10:35:28
4	Salvador and Honduras.	10:35:36
5	Q. Which Secretary was this?	10:35:37
6	A. Acting Secretary Duke.	10:35:38
7	Q. Do you recall who raised the issue of TPS	10:35:44
8	at this meeting?	10:35:48
9	A. She did.	10:35:48
10	Q. Do you recall what type of information she	10:35:49
11	was specifically seeking?	10:35:55
12	A. I do, but it was a classified discussion	10:35:55
13	and I'm afraid I can't go any further.	10:35:58
14	Q. Okay. Did the -- did -- was the	10:36:00
15	information that she sought ultimately provided?	10:36:05
16	A. Some information was ultimately provided	10:36:08
17	to her; whether all her questions were answered or	10:36:14
18	not, I don't know.	10:36:18
19	Q. So there was a review of TPS for Honduras.	10:36:19
20	Well, how many reviews is -- how many times was	10:36:40
21	TPS -- was Honduras up for review for TPS at the	10:36:42
22	time that you were at DHS?	10:36:47
23	A. Certainly once. I'm hesitating because,	10:36:52
24	you know, it's a rolling thing. As you know, TPS	10:37:06
25	was extended for six months, which means that she	10:37:10

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1 immediately had to start thinking about the next  
2 iteration of that. So that's why I'm hesitating to  
3 say how many times did it come up.

10:37:16  
10:37:19  
10:37:23

4 It was on the plate during the time she  
5 was the Acting Secretary.

10:37:25  
10:37:28

6 Q. And the first time that Honduras was  
7 reviewed for TPS, was it reviewed alongside the  
8 review for El Salvador?

10:37:30  
10:37:33  
10:37:36

9 A. So my recollection is that Honduras and El  
10 Salvador are on slightly different schedules, but  
11 that there was a general understanding that  
12 Honduras and El Salvador had to be addressed in a  
13 similar way because U.S. equities in both countries  
14 are very similar, and there would be -- there could  
15 be implications for U.S. policy if they were  
16 treated differently, so even though they were on  
17 different time frames, there was an effort to treat  
18 them similarly and on the same time frame.

10:37:41  
10:37:46  
10:37:48  
10:37:51  
10:37:57  
10:38:02  
10:38:07  
10:38:09  
10:38:13  
10:38:17

19 Q. So do you recall whether this meeting that  
20 you're describing was a meeting that predated the  
21 first decision by Acting Secretary Duke with regard  
22 to TPS for Honduras?

10:38:23  
10:38:30  
10:38:33  
10:38:39

23 A. I don't recall specifically, no.

10:38:41

24 Q. Do you recall -- you said that you  
25 recalled one specific meeting and gave some

10:38:42  
10:38:45

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1 background on that meeting.

10:38:47

2 Are there any other instances that you  
3 recall where TPS came up in those morning meetings  
4 for the DHS Secretary?

10:38:48

10:38:50

10:38:53

5 A. I don't recall specific instances.

10:38:55

6 MR. KIRSCHNER: How are we doing on time  
7 and questioning -- of where you are with the line  
8 of questioning and break?

10:39:00

10:39:02

10:39:06

9 MS. MacLEAN: Maybe I'll cover the other  
10 two standing meetings that you have and then we'll  
11 take a break, if that -- is that okay with you?

10:39:07

10:39:09

10:39:12

12 THE WITNESS: It's okay with me.

10:39:14

13 MS. MacLEAN: Does that work? Okay.

10:39:16

14 Q. So you described the second meeting --  
15 second type of standing meeting that you described  
16 was a meeting that was held by the DHS Chief of  
17 Staff generally a couple of times a week.

10:39:16

10:39:19

10:39:22

10:39:26

18 Did TPS ever come up in those meetings, to  
19 your recollection?

10:39:29

10:39:32

20 A. I'm sure it did. That meeting -- you  
21 know, the Secretary's meeting that I described was  
22 by definition very, very high level, what does the  
23 Secretary need to know. The Chief of Staff's  
24 meeting was a different meeting. It was more of a  
25 what do people need to do today, what's going on,

10:39:33

10:39:36

10:39:40

10:39:43

10:39:46

10:39:49

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1 you know, what are you doing, who are you meeting 10:39:52  
2 with, how does that all feed into the big picture, 10:39:55  
3 you know, that supports the Secretary and the 10:39:59  
4 greater mission of DHS. 10:40:00

5 So I'm sure it came up, but it wasn't a 10:40:02  
6 forum for a -- for a deep discussion of TPS. 10:40:06

7 Q. And who attended the DHS Chief of Staff 10:40:10  
8 meetings? 10:40:15

9 A. So that was more widely attended by 10:40:15  
10 component heads or their representatives. And by 10:40:20  
11 "component heads," I mean USCIS, CBP, ICE, et 10:40:23  
12 cetera. And then the various offices within DHS 10:40:29  
13 headquarters, so the Office of Policy, the Office 10:40:33  
14 of Management, so on, Office of General Counsel. 10:40:36

15 Q. And the last standing meeting that you 10:40:43  
16 described or the last standing meeting that you 10:40:53  
17 mentioned were internal meetings within the DHS 10:40:56  
18 Office of Policy that took place about once a week. 10:41:23

19 A. Um-hum. 10:41:02

20 Q. Who would attend those meetings? 10:41:02

21 A. So that was also fairly widely attended, 10:41:05  
22 usually about 30 people, and those would be sort of 10:41:08  
23 the director level people in the Office of Policy. 10:41:11  
24 So people who ran, for example, a geographic 10:41:14  
25 bureau, you know, the Central America guy, the 10:41:18

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1	Middle East guy.	10:41:21
2	Q. What was the purpose of these meetings?	10:41:24
3	A. It was basically a show-and-tell meeting.	10:41:26
4	It was so that I would have situational awareness	10:41:30
5	of what -- all the things that the office was	10:41:33
6	engaged in, and so they would have situational	10:41:35
7	awareness.	10:41:39
8	I could report down on what the	10:41:39
9	Secretary's activities were, what was on her mind,	10:41:41
10	how we should prioritize ourselves for the next	10:41:45
11	week or so.	10:41:49
12	Q. Were there agendas for these meetings?	10:41:50
13	A. There were not. They were very	10:41:52
14	freewheeling.	10:41:54
15	Q. Did someone facilitate those meetings?	10:41:55
16	Was that you or someone --	10:41:58
17	A. That was me.	10:42:00
18	Q. Okay. Did someone keep notes for these	10:42:00
19	meetings?	10:42:03
20	A. I didn't. It's -- I'm sure there were	10:42:04
21	people around the table who took notes so that they	10:42:05
22	could report back to their teams. But there was no	10:42:09
23	formal note-taking process, there was no designated	10:42:12
24	note-taker.	10:42:15
25	Q. Do you recall TPS coming up in these	10:42:16

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1	meetings?	10:42:18
2	A. TPS certainly would have come up at these	10:42:18
3	meetings. For example, members of my staff would	10:42:22
4	say the Honduran foreign minister is coming to town	10:42:25
5	and she wants to meet with the Secretary, how	10:42:30
6	should we handle that.	10:42:33
7	Or I would say hey, the Secretary met with	10:42:36
8	the Haitian foreign minister last week, he made a	10:42:38
9	pitch on TPS and, you know, here's a readout of	10:42:42
10	that meeting. So it was an exchange of	10:42:44
11	information.	10:42:46
12	Q. Were -- were those meetings an opportunity	10:42:46
13	for a discussion of issues, or were they more for	10:42:48
14	sharing information or something else entirely?	10:42:52
15	A. They were more for sharing information.	10:42:54
16	Again, not a forum for a deep discussion of -- of	10:42:56
17	issues. There was just too much on our plate.	10:42:58
18	Q. And about how long would these meetings	10:43:00
19	take?	10:43:03
20	A. These meetings would take about an hour.	10:43:03
21	Q. Okay. Besides the examples that you're	10:43:05
22	describing of updates on foreign governments	10:43:09
23	requesting meetings or on meetings that foreign	10:43:15
24	governments would have with the DHS Secretary or	10:43:18
25	someone else within the Department, how else would	10:43:21

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1	TPS come up in these standing meetings?	10:43:23
2	A. Um, so I don't recall specific instances	10:43:27
3	in which it came up, but, for example, someone	10:43:31
4	could say -- just putting it out there, the Sudan	10:43:34
5	decision is looming in three weeks' time, waiting	10:43:39
6	to hear from the State Department with their letter	10:43:42
7	from the Secretary and their country conditions	10:43:46
8	report, something like that could come up,	10:43:48
9	awareness raising.	10:43:52
10	Q. Okay. Great.	10:43:57
11	MS. MacLEAN: So I think we'll take a	10:43:58
12	break. Does five minutes sound good or 10 minutes?	10:44:00
13	How much time would be good?	10:44:04
14	MR. KIRSCHNER: Let's try to aim for five	10:44:04
15	but might slip to 10.	10:44:05
16	THE VIDEOGRAPHER: Time is 10:44. We are	10:44:07
17	off the record.	10:44:10
18	(Proceedings interrupted at 10:44 a.m. and	10:44:11
19	reconvened at 11:05 a.m.)	10:44:12
20	THE VIDEOGRAPHER: The time is 11:05. We	11:05:27
21	are back on the record.	11:05:36
22	BY MS. MacLEAN:	11:05:37
23	Q. So Ambassador Nealon, you may feel like	11:05:37
24	you have answered this question already, but what	11:05:40
25	was your decision-making authority with regard to	11:05:43

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1	TPS?	11:05:45
2	A. None.	11:05:45
3	Q. Besides the people that you have described	11:05:46
4	as having engaged with in making recommendations	11:05:56
5	regarding TPS or meeting with -- meeting with	11:06:01
6	regarding TPS, is there anyone else within the	11:06:07
7	Department that you have engaged with regarding	11:06:11
8	TPS?	11:06:14
9	A. So at meetings where TPS was discussed,	11:06:19
10	there could have been a lot of different people at	11:06:30
11	those meetings. You know, I just don't recall the	11:06:34
12	specifics.	11:06:40
13	But I think the people that I've described	11:06:42
14	are the people who played the biggest role in TPS.	11:06:44
15	But again, it was a secretarial decision.	11:06:49
16	Q. Uh-huh. And you identified before the	11:06:51
17	break that you wanted to refresh your recollection	11:06:54
18	regarding the staff in the Office of Policy besides	11:06:59
19	Briana Petyo who had any involvement in TPS. Did	11:07:03
20	you have any chance to look at that during the	11:07:09
21	break?	11:07:13
22	A. I didn't. But I will do that.	11:07:13
23	Q. You can do it after lunch, that's fine.	11:07:13
24	A. (Nodding head up and down.)	11:07:16
25	Q. Who succeeded you at the Department, in	11:07:26

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1 the DHS Office of Policy after you left? 11:07:29

2 A. I believe it's James McCament. 11:07:31

3 Q. I saw that and I was a bit confused, 11:07:35

4 because I had understood that he was the Deputy 11:07:38

5 Director at USCIS. Am I misunderstanding his role? 11:07:41

6 A. So he was the Deputy Director at USCIS. 11:07:45

7 My understanding, and this may be an imperfect 11:07:49

8 understanding, is that he's now the Acting Deputy 11:07:52

9 Undersecretary of Policy. So there's still no 11:08:01

10 Senate-confirmed Undersecretary of Policy, and I 11:08:03

11 understand he's been put in a job that was vacant 11:08:07

12 during the time I was there, which is the Deputy 11:08:10

13 Undersecretary of Policy. 11:08:15

14 Q. And -- 11:08:15

15 A. But he's effectively running the Office of 11:08:17

16 Policy. 11:08:20

17 Q. Uh-huh. And does he serve that role and a 11:08:20

18 role at USCIS, to your knowledge? 11:08:22

19 A. I don't know. 11:08:24

20 MS. MacLEAN: Okay. Going to mark this 11:08:54

21 document as Exhibit 32. 11:08:56

22 (Exhibit 32, DHS-001-659-000035 - 77, 11:08:57

23 marked for identification.) 11:08:59

24 Q. You don't need to read the report, but if 11:08:59

25 you could read the e-mail that's attached to the 11:09:01

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1 report, I would appreciate it.

11:09:03

2 A. Okay.

11:10:04

3 Q. So I know that this predicated your time as  
4 well. It identifies the addressee as "Immigration  
5 Policy." Do you know who Immigration Policy would  
6 be referring to?

11:10:04

11:10:07

11:10:11

11:10:13

7 MR. KIRSCHNER: Objection, speculative.

11:10:14

8 A. I don't. I would speculate that it's a  
9 team within -- within the Office of Policy that  
10 deals with immigration policy.

11:10:20

11:10:24

11:10:32

11 Q. Do you know who would be in that team?

11:10:33

12 MR. KIRSCHNER: Objection, speculative.

11:10:40

13 A. At this time, I think it would have been  
14 Francis Cissna, before he went over to USCIS.

11:10:41

11:10:50

15 Q. What was his role in the Office of Policy  
16 before he went over to USCIS?

11:10:56

11:10:58

17 A. He worked on immigration policy in the  
18 Office of Policy.

11:10:59

11:11:01

19 Q. Did he have a particular title that you're  
20 aware of?

11:11:02

11:11:05

21 A. I don't recall what his title was.

11:11:06

22 Q. Were there other people in the immigration  
23 policy team in the Office of Policy?

11:11:07

11:11:10

24 MR. KIRSCHNER: Objection, foundation.

11:11:12

25 A. So the Assistant Secretary, I believe he

11:11:18

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1 was on board at that time, who ran what's called 11:11:21  
2 Borders, Immigration and Trade, the Assistant 11:11:27  
3 Secretary of Borders, Immigration and Trade within 11:11:29  
4 the Office of Policy is a gentleman named Michael 11:11:33  
5 Dougherty. 11:11:38

6 Q. Was there anyone else that would be 11:11:39  
7 referred to as part of an immigration policy team? 11:11:41

8 A. So there are. There are members of that 11:11:42  
9 team that I -- I couldn't tell you now who they 11:11:44  
10 are. 11:11:53

11 Q. Were there other people that you would 11:11:53  
12 consider to be part of the immigration policy team 11:11:55  
13 in the Office of Policy? 11:11:58

14 The subject of that e-mail is "Forward due 11:12:02  
15 4/6 at 5:00 p.m. ESEC report comment clearance." 11:12:08  
16 Is that the comment clearance -- or is that the 11:12:14  
17 clearance process that you described earlier, to 11:12:15  
18 your recollection? 11:12:17

19 MR. KIRSCHNER: Objection, speculative. 11:12:17

20 A. So, yes, ESEC stands for the Executive 11:12:20  
21 Secretary, which is the body within DHS that 11:12:24  
22 coordinates and clears paperwork. 11:12:30

23 Q. So within the body of the e-mail, there 11:12:40  
24 are three paragraphs: The second paragraph and the 11:12:43  
25 longest paragraph says in the last line, "Might be 11:12:47

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1 worth lifting TPS on the IMM PLCY priority list so 11:12:52  
2 we know how the DHS FO USCIS want to proceed and 11:12:56  
3 can coordinate appropriately." 11:13:02  
  
4 Do you see that? 11:13:04  
  
5 A. I do. 11:13:04  
  
6 Q. Do you know what the IMM, I-M-M, policy, 11:13:05  
7 P-L-C-Y, priority list refers to? 11:13:09  
  
8 MR. KIRSCHNER: Objection, speculative. 11:13:13  
  
9 A. I don't. 11:13:13  
  
10 Q. When you were at DHS, to your knowledge, 11:13:22  
11 was there an immigration policy priority list? 11:13:22  
  
12 A. I wasn't aware of one. 11:13:24  
  
13 Q. Okay. Do you know what DHS FO refers to? 11:13:26  
  
14 A. The DHS front office. 11:13:31  
  
15 Q. And then the last line reads, "If not, 11:13:36  
16 I'll check with TPSP/SCO and get this back to 11:13:39  
17 policy Exec Sec." 11:13:47  
  
18 What -- do you know what TPSP/SCO refers 11:13:50  
19 to? 11:13:54  
  
20 MR. KIRSCHNER: Objection, speculative. 11:13:55  
  
21 A. I don't. 11:13:56  
  
22 Q. Okay. We can move on from this document. 11:14:06  
  
23 And I'll mark this as Exhibit 33. And 11:14:14  
24 this does concern your time at DHS, so I'll give 11:14:24  
25 you a moment to review that document. 11:14:27

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1	(Exhibit 33, DHS-001-659-000459 - 460,	13:05:00
2	marked for identification.)	13:05:01
3	A. Okay.	11:14:58
4	Q. So to the extent that you know, could you	11:15:02
5	let me know who the people are who listed on either	11:15:05
6	the from or to lines of the two e-mails that are	11:15:07
7	included here?	11:15:10
8	A. Yes. So Jonathan Hoffman is or at least	11:15:10
9	was the Assistant Secretary for Public Affairs DHS.	11:15:17
10	Lauren Claffey works for him. Briana Petyo was my	11:15:23
11	Chief of Staff, Chief of Staff of the Office of	11:15:31
12	Policy. Chad Wolf was the Secretary's Chief of	11:15:34
13	Staff. Elizabeth Neumann was the Secretary's	11:15:39
14	deputy Chief of Staff.	11:15:43
15	Q. Can you -- the subject line of the message	11:15:50
16	is "TPS tick-tock." Did that have a particular	11:15:54
17	meaning within the Department?	11:16:00
18	A. Yes. So "tick-tock" is an informal term	11:16:01
19	used for the sequencing of events. So in this	11:16:10
20	case, it refers -- it appears to refer to the	11:16:11
21	sequencing of events following the cancellation of	11:16:14
22	Haiti TPS.	11:16:19
23	Q. And this is a message that's from you. So	11:16:32
24	were the events that are outlined here events that	11:16:35
25	you or your office were responsible for following	11:16:38

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1	the cancellation?	11:16:40
2	A. So I see that in the subject line -- you	11:16:44
3	can see it's "re TPS tick-tock," so in other words,	11:16:45
4	I think I was replying to something, but --	11:16:50
5	Q. Sorry. If I can just correct you. If we	11:16:53
6	look at the main e-mail that begins at the middle	11:16:57
7	of the page, that seems to be an e-mail that's	11:17:02
8	initiated by you and with the subject "TPS	11:17:05
9	tick-tock"; is that correct?	11:17:08
10	A. Yes, fair enough.	11:17:11
11	MR. KIRSCHNER: I just want to interject.	11:17:12
12	I mean, this is fine for purposes of clarification,	11:17:15
13	but next time I'd ask counsel to let Ambassador	11:17:17
14	Nealon finish his response before providing	11:17:22
15	clarification.	11:17:24
16	MS. MacLEAN: Understood.	11:17:25
17	Q. So can you clarify whether these tasks	11:17:26
18	were tasks that you were responsible for or someone	11:17:31
19	else in the Department or elsewhere was responsible	11:17:34
20	for?	11:17:36
21	A. So it looks like what I'm doing in this	11:17:36
22	e-mail is listing the things that my office has	11:17:39
23	done or that I'm aware that other entities of the	11:17:44
24	U.S. government have done in relation to the	11:17:48
25	termination of TPS.	11:17:51

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1	Q. Thank you.	11:17:51
2	And so the item number 1 that you identify	11:17:54
3	here in the e-mail says, "notified State, Western	11:17:57
4	Hemisphere." What would that be referring to?	11:17:59
5	A. That would be the Bureau of Western	11:18:02
6	Hemisphere Affairs at the Department of State.	11:18:07
7	Q. And PRM, what would PRM be referring to?	11:18:09
8	A. PRM is the Bureau of Population, Refugees	11:18:12
9	and Migration, Department of State.	11:18:12
10	Q. Why would you be notifying them of the TPS	11:18:19
11	termination?	11:18:22
12	A. Because they play -- that bureau plays a	11:18:23
13	key role in producing the paperwork at the	11:18:25
14	Department of State related to TPS.	11:18:30
15	Q. Is that with regard to TPS for countries,	11:18:34
16	for specific countries, or for TPS for all	11:18:39
17	countries?	11:18:42
18	A. TPS for all countries.	11:18:42
19	Q. And the next part of that line says "and	11:18:44
20	shared PAG." What does "PAG" refer to, if you	11:18:50
21	know?	11:18:54
22	A. It refers to public affairs guidance.	11:18:54
23	Q. And what is included in public affairs	11:18:57
24	guidance?	11:19:00
25	A. Public affairs guidance would typically	11:19:01

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1 include the talking points for public consumption 11:19:03  
2 related to a specific issue. 11:19:07  
3 Q. Who produces the public affairs guidance 11:19:09  
4 for the Department? 11:19:15  
5 A. The Assistant Secretary of public affairs 11:19:15  
6 would be ultimately responsible for those talking 11:19:21  
7 points. 11:19:23  
8 Q. Okay. And the next line, number 2, says, 11:19:23  
9 "State is notifying our embassy in Haiti." I think 11:19:31  
10 that's fairly self-explanatory. 11:19:35  
11 Number 3 says, "I notified NSC at their 11:19:37  
12 request." What does NSC refer to? 11:19:41  
13 A. That refers to the National Security 11:19:44  
14 Council. 11:19:48  
15 Q. Is that the National Security Council at 11:19:48  
16 the White House -- 11:19:50  
17 A. Yes. 11:19:50  
18 Q. -- or is there a different National 11:19:51  
19 Security Council? Yes. 11:19:54  
20 Do you recall the National Security 11:19:55  
21 Council requesting notification about the TPS 11:19:58  
22 termination for Haiti? 11:20:00  
23 A. You know, I don't specifically remember, 11:20:01  
24 but, in general, the White House was keenly 11:20:05  
25 interested in the Secretary's decisions related to 11:20:08

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1 TPS. So it was a standard practice that we would  
2 notify them as soon as she had made a decision.

11:20:11

3 Q. How did you know that the White House was  
4 keenly interested in TPS decisions?

11:20:18

5 MR. KIRSCHNER: Objection. To the extent  
6 that this is calling for internal government  
7 deliberations, I would request that you not answer.  
8 To the extent that you can give a general answer,  
9 then feel free to go ahead.

11:20:23

11:20:26

11:20:29

11:20:32

11:20:34

10 A. They would tell us directly that they  
11 would like to know as soon as the Secretary made a  
12 decision.

11:20:40

11:20:42

11:20:46

13 Q. When you say "they," who would let you  
14 know that they were interested in knowing what the  
15 TPS decision was likely to be?

11:20:49

11:20:51

11:20:54

16 A. It would be at the staff level of the  
17 National Security Council. I see the name has been  
18 redacted here. It looks like I listed the name in  
19 the e-mail and it's been redacted.

11:20:56

11:20:59

11:21:05

11:21:07

20 Q. Do you recall the name but are withholding  
21 it because of the deliberative process privilege?

11:21:09

11:21:14

22 MR. KIRSCHNER: Objection, that is a  
23 misrepresentation of the withholding listed in this  
24 document.

11:21:16

11:21:18

11:21:20

25 MS. MacLEAN: Sorry. B6.

11:21:22

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1	Q. Do you recall the name of who the person	11:21:24
2	is that you would have been in communication with?	11:21:25
3	A. I don't specifically recall, but I -- I	11:21:27
4	can imagine who that person was, yes.	11:21:30
5	Q. Were there others besides the staff person	11:21:32
6	that you're describing at the National Security	11:21:42
7	Council who are at the White House who expressed	11:21:45
8	interest in the TPS decisions?	11:21:48
9	A. Not to me.	11:21:50
10	Q. So when you were engaged with the White	11:21:52
11	House in communications around TPS, is it fair to	11:21:55
12	say that was with the National Security Council in	11:21:57
13	particular?	11:22:00
14	A. Yes.	11:22:01
15	Q. And exclusively with the National Security	11:22:02
16	Council in particular?	11:22:16
17	A. So my recollection is that when I	11:22:13
18	communicated TPS decisions to the White House, I	11:22:15
19	communicated them to the National Security Council,	11:22:19
20	yes.	11:22:23
21	Q. Did anyone from the White House	11:22:24
22	communicate with you or your team regarding TPS	11:22:26
23	outside of the person that you're thinking of at	11:22:31
24	the National Security Council?	11:22:34
25	A. Not with me directly. Whether they	11:22:36

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1 communicated with my team, I wasn't aware of. 11:22:43

2 Q. So number 3 says, "I notified NSC" -- the 11:22:49  
3 name is redacted -- "at their request." 11:22:56

4 Is it fair to say that you're representing 11:23:00  
5 that NSC had a general request for information 11:23:03  
6 about TPS decisions, not a specific request here 11:23:06  
7 about the TPS decision with regard to Haiti? 11:23:10

8 MR. KIRSCHNER: Objection, confusing, no 11:23:14  
9 foundation. 11:23:18

10 A. I think I can answer. I recall on a 11:23:18  
11 number of TPS decisions, there was an individual at 11:23:24  
12 the National Security Council, who was sort of my 11:23:27  
13 natural counterpart, with whom I would communicate 11:23:30  
14 and who was keenly interested in knowing when a 11:23:34  
15 decision had been made and what that decision was 11:23:39  
16 so that he could then communicate that decision up 11:23:42  
17 his chain of command. 11:23:45

18 Q. And who was that person? 11:23:46

19 A. Gary Tomasulo. 11:23:49

20 Q. Gary -- what's his last name? 11:23:53

21 A. Tomasulo. T-o-m-a-s-u-l-o. 11:23:54

22 Q. Do you know his title? 11:24:00

23 A. I believe he was the director of 11:24:02  
24 trans-border affairs at the NSC. 11:24:05

25 Q. Do you know what his responsibilities 11:24:13

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1	were?	11:24:15
2	A. I don't specifically know what his	11:24:15
3	responsibilities were, no.	11:24:18
4	So just to be crystal clear, I don't know	11:24:33
5	for certain that that's the name that I wrote in	11:24:35
6	there.	11:24:37
7	Q. Right.	11:24:37
8	A. What I do know is that typically, that's	11:24:37
9	the person who I would communicate with at the NSC.	11:24:39
10	So I'm assuming that's --	11:24:42
11	Q. Fair enough. Were there any other people	11:24:46
12	at NSC that you would communicate with about TPS	11:24:49
13	decisions?	11:24:52
14	A. I don't recall, no. I don't recall	11:24:53
15	communicating with other people about the	11:24:58
16	Secretary's decisions on TPS.	11:25:01
17	Q. Okay. The next line reads, "I have called	11:25:03
18	Haiti AMB" -- what would "AMB" refer to?	11:25:15
19	A. That's the Haitian ambassador to the	11:25:18
20	United States.	11:25:24
21	Q. And then the last line reads, "Our chargee	11:25:25
22	in Haiti will notify Haitian government	11:25:27
23	officially."	11:25:31
24	We can close out that e-mail.	11:25:47
25	So we'll move on to a discussion about the	11:25:50

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1 role of the State Department with regard to TPS 11:25:51  
2 determinations. What is your general understanding 11:25:56  
3 of the role of the State Department with regard to 11:25:57  
4 TPS determinations? 11:26:01  
  
5 A. My general understanding of the role of 11:26:02  
6 the State Department is that the termination or not 11:26:04  
7 or extension of TPS is a decision made by the 11:26:10  
8 Secretary of Homeland Security, but with 11:26:13  
9 consultation and input from the Secretary of State. 11:26:19  
  
10 Q. During your tenure at DHS, did the State 11:26:26  
11 Department provide recommendations with regard -- 11:26:29  
12 sorry -- during your tenure at DHS, did the 11:26:31  
13 Secretary of State or the Deputy Secretary of State 11:26:34  
14 provide recommendations concerning TPS 11:26:37  
15 determinations? 11:26:40  
  
16 A. Yes. 11:26:41  
  
17 Q. At what stage in the process, to your 11:26:41  
18 knowledge, did the Department of State provide 11:26:50  
19 recommendations? 11:26:52  
  
20 A. So the way the process is supposed to 11:26:53  
21 work, as we discussed, the Secretary of Homeland 11:26:57  
22 Security is supposed to render a determination at 11:27:02  
23 least 60 days before the termination of TPS. And 11:27:05  
24 so I'm not aware of a hard deadline for the 11:27:12  
25 Secretary of State to submit his input to Homeland 11:27:15

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1 Security, but obviously, it has to be in a timely 11:27:20  
2 way so that the Secretary of Homeland Security has 11:27:23  
3 time to consider that input before rendering her 11:27:26  
4 decision. 11:27:28

5 Q. So you started off by saying the way that 11:27:30  
6 it's supposed to work and then outlined the 11:27:33  
7 process. 11:27:36

8 A. (Nodding head up and down.) 11:27:37

9 Q. Is it your recollection that it generally 11:27:38  
10 worked in the way that you described? 11:27:40

11 A. It's my recollection that the State 11:27:41  
12 Department was often very slow and late in getting 11:27:44  
13 their materials to the Secretary so that she had 11:27:49  
14 sufficient time to consider those materials before 11:27:53  
15 making her decision. 11:27:55

16 Q. Do you recall sort of approximately at 11:27:57  
17 what stage of the process the Secretary of State or 11:28:02  
18 the Deputy Secretary of State engaged with the DHS 11:28:06  
19 Secretary or DHS with the recommendations? 11:28:09

20 MR. KIRSCHNER: Objection, vague. It's 11:28:11  
21 general in the context of the questions at issue in 11:28:16  
22 this case. 11:28:21

23 A. So for example, in the case of Sudan, I 11:28:22  
24 believe the Department of State's paperwork was 11:28:31  
25 very late in arriving at Homeland Security and I 11:28:35

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1 recall that being an issue.

11:28:43

2 Q. In what way was it an issue?

11:28:44

3 A. It was an issue in that the Secretary's  
4 office -- Secretary of homeland security's office  
5 was clamoring for that input so that she would have  
6 sufficient time to read it, process it, before  
7 having to make her decision.

11:28:46

11:28:50

11:28:54

11:28:58

11:29:00

8 Q. You had described at the outset your role  
9 as engaging with the State Department and as one of  
10 the key entities within the Department of Homeland  
11 Security that was engaged with the State  
12 Department. Had you engaged with the State  
13 Department in your recollection in the -- in  
14 connection with the particular case of the TPS  
15 determination of Sudan?

11:29:01

11:29:04

11:29:07

11:29:10

11:29:12

11:29:14

11:29:18

11:29:22

16 A. Yes, I believe so. And the reason I say I  
17 believe so is because it's sometimes difficult for  
18 me to separate in my mind which TPS decision, a  
19 particular phone call, or conversation took place  
20 regarding. But I do recall talking to the State  
21 Department about the Sudan paperwork and expressing  
22 the Secretary of Homeland Security's displeasure  
23 with the lateness of that paperwork.

11:29:23

11:29:26

11:29:29

11:29:33

11:29:36

11:29:44

11:29:49

11:29:53

24 Q. Do you recall what the response was from  
25 the --

11:30:04

11:30:04

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1	MS. MacLEAN: Well, let me step back.	11:30:04
2	Q. Do you recall who you communicated with at	11:30:04
3	the State Department regarding those concerns?	11:30:06
4	A. So I don't specifically in the case of	11:30:08
5	Sudan remember who I communicated with. But I	11:30:10
6	generally communicated with a gentleman -- in	11:30:14
7	issues regarding TPS, I generally communicated with	11:30:16
8	a gentleman named Simon Henshaw. H-e-n-s-h-a-w.	11:30:21
9	Q. Do you recall what Mr. Henshaw's role was	11:30:26
10	at the Department of State?	11:30:30
11	A. So his role was the acting Assistant	11:30:32
12	Secretary of the Bureau of Population, Refugees and	11:30:36
13	Migration.	11:30:40
14	Q. Do you recall what his response was to	11:30:41
15	your expression of concerns about the lateness of	11:30:44
16	the State Department's response?	11:30:49
17	A. Yes. He expressed similar frustration in	11:30:58
18	that his office had sent the paperwork forward in	11:31:02
19	what he considered to be a timely fashion, but it	11:31:06
20	had gotten stuck in the Secretary of State's office	11:31:09
21	and was sitting there.	11:31:12
22	Q. Did you recall him expressing any	11:31:14
23	explanation as to why it had gotten stuck in the	11:31:16
24	front office?	11:31:20
25	A. I don't.	11:31:20

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1	Q. Do you have any other information that	11:31:24
2	would explain why the Department of State	11:31:27
3	recommendations concerning TPS would arrive late?	11:31:30
4	MR. KIRSCHNER: Objection, calls for	11:31:38
5	speculation.	11:31:40
6	A. So I would speculate that the paperwork	11:31:42
7	got stuck in the clearance process and hadn't been	11:31:48
8	presented to the Secretary for his signature.	11:31:52
9	Q. The conversation that you described with	11:31:54
10	Mr. Henshaw, was that a conversation that you had	11:32:00
11	generally more than once beyond the specific	11:32:10
12	situation of Sudan's TPS determination?	11:32:12
13	MR. KIRSCHNER: Objection, vague.	11:32:15
14	Q. Do you recall communicating with	11:32:18
15	Mr. Henshaw more than once about the lateness of	11:32:20
16	the Secretary of State's response in the TPS	11:32:22
17	determination process?	11:32:26
18	A. Yes, yes.	11:32:27
19	Q. Can you describe another communication	11:32:28
20	that you recall with Mr. Henshaw concerning the	11:32:33
21	lateness of the Secretary of State's input in the	11:32:36
22	TPS determination process?	11:32:40
23	A. So I believe a similar situation arose	11:32:42
24	regarding Central America. I believe there was	11:32:45
25	also an issue, not as dire, but there was also an	11:32:52

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1	issue of the timeliness of the Secretary of State's	11:32:57
2	input being sent over to Department of Homeland	11:33:00
3	Security.	11:33:04
4	Q. Did you reach out to Mr. Henshaw in that	11:33:04
5	instance as well?	11:33:08
6	A. I did.	11:33:09
7	Q. Do you recall what Mr. Henshaw's response	11:33:09
8	was then?	11:33:11
9	A. I recall a similar response, that the	11:33:12
10	paperwork had been done by the professional staffs	11:33:17
11	and had been sent forward but hadn't yet emerged	11:33:21
12	from the Secretary's office.	11:33:27
13	Q. Did he express any explanation as to why	11:33:29
14	there was a delay in the instance of the	11:33:38
15	recommendation concerning Central American TPS?	11:33:41
16	A. If I recall correctly, he expressed the	11:33:44
17	belief that the paperwork was stuck in an office	11:33:51
18	called policy planning, which is part of the	11:33:55
19	Secretary of State's front office, if you will,	11:33:58
20	that vetted paper before it went to the Secretary,	11:34:04
21	and I believe I recall him expressing his belief	11:34:08
22	that the paperwork hadn't emerged from that office	11:34:10
23	to the Secretary's desk.	11:34:14
24	Q. Do you know who is in the Office of Policy	11:34:16
25	Planning at the Department of State?	11:34:20

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1	A. I don't know who's there now, no.	11:34:22
2	Q. Do you know who was there at the time that	11:34:24
3	you were there?	11:34:26
4	A. I believe it was run by a gentleman named	11:34:26
5	Brian Hook.	11:34:34
6	Q. Is that an office that predicated this	11:34:35
7	administration, to your recollection?	11:34:39
8	A. Yes.	11:34:41
9	Q. Is Brian Hook a political appointee or a	11:34:41
10	career appointee, to your knowledge?	11:34:46
11	A. I believe he's a political appointee.	11:34:48
12	Q. Did you engage with the Office of Policy	11:34:51
13	Planning at all at the Department of State around	11:34:56
14	TPS?	11:34:59
15	A. Yes.	11:34:59
16	Q. Can you outline in general terms the	11:35:02
17	context in which you would engage with the Office	11:35:11
18	of Policy Planning at the Department of State	11:35:16
19	regarding TPS?	11:35:16
20	A. Again, it's often difficult for me to	11:35:17
21	recall which TPS decision I had a specific	11:35:20
22	conversation about, but I believe I spoke to the	11:35:22
23	Office of Policy Planning regarding the Central	11:35:28
24	America decision and the need to get that	11:35:31
25	paperwork.	11:35:32

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1	Q. Do you recall -- sorry -- was it Mr. Hook	11:35:33
2	that you spoke with --	11:35:37
3	A. No.	11:35:38
4	Q. -- from the Office of Policy Planning?	11:35:39
5	Do you recall who you spoke with?	11:35:41
6	A. I believe I spoke with Kimberly Breier,	11:35:43
7	B-r-e-i-e-r.	11:35:51
8	Q. Do you recall what her role was?	11:35:55
9	A. I don't know what her specific title was,	11:35:57
10	no.	11:36:01
11	Q. Do you recall if this conversation was	11:36:03
12	after a conversation with Mr. Henshaw -- after the	11:36:04
13	conversation with Mr. Henshaw that you identified	11:36:07
14	where you expressed that Mr. Henshaw thought that	11:36:10
15	the decision might be held up in the Office of	11:36:13
16	Policy Planning?	11:36:16
17	A. I don't remember the chronology	11:36:16
18	specifically, but it would make sense that I would	11:36:20
19	have spoken to the Office of Policy Planning after	11:36:22
20	speaking to Mr. Henshaw.	11:36:25
21	Q. And do you recall what Ms. Breier shared	11:36:26
22	about the TPS recommendation for Central America?	11:36:30
23	A. I don't remember the specifics of the	11:36:35
24	conversation. I took the opportunity to express	11:36:38
25	the Secretary's -- Secretary of Homeland Security's	11:36:42

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1 frustration and the need to get the paperwork in a  
2 timely manner and she seemed to understand that  
3 need.

11:36:47  
11:36:50  
11:36:53

4 Q. Did she express or suggest any reason why  
5 there was a holdup in the Department of State's  
6 recommendation concerning TPS?

11:36:54  
11:37:00  
11:37:04

7 A. Not that I recall.

11:37:06

8 Q. Do you know if the recommendation was  
9 provided soon after that conversation?

11:37:12  
11:37:17

10 MR. KIRSCHNER: Objection, calls for  
11 speculation.

11:37:19  
11:37:21

12 A. So, again, I don't recall the specific  
13 chronology. I do know that we did eventually get  
14 the paperwork from the Department of State in a  
15 more timely fashion than we had, for example, in  
16 the case of Sudan.

11:37:21  
11:37:29  
11:37:34  
11:37:36  
11:37:41

17 Q. Besides that one phone call that you --  
18 was that a phone call that you're describing with  
19 Ms. Breier?

11:37:42  
11:37:45  
11:37:47

20 A. Yes.

11:37:48

21 Q. Besides that one phone call with  
22 Ms. Breier, were there other instances in which you  
23 engaged with Department of State Office of Policy  
24 Planning regarding TPS?

11:37:51  
11:37:54  
11:37:58

25 A. I also recall having a conversation with a

11:37:58

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1 woman who's first name is Tamara, T-a-m-a-r-a, and  
2 her surname escapes me at the moment. But I don't  
3 recall which TPS decision I spoke to her about.

4 Q. What do you recall about that  
5 conversation?

6 A. I recall similarly taking the opportunity  
7 to express the Department of Homeland Security's  
8 need to see the State Department's paperwork in a  
9 timely fashion if that input was going to receive  
10 consideration from the Secretary of Homeland  
11 Security.

12 Q. Do you recall the response from Tamara?

13 A. I don't, but I recall all my conversations  
14 with the Department of State were cordial and  
15 professional.

16 Q. When you were outlining -- first, were  
17 there any other instances in which you engaged with  
18 the Department of State Office of Policy Planning  
19 regarding TPS?

20 A. Not that I recall, no.

21 Q. When you were describing the concerns  
22 about the delayed response from the Secretary of  
23 State concerning TPS for Central America, you said  
24 it was not as dire as the situation with regard to  
25 Sudan. Why would you describe the situation with

11:38:04

11:38:09

11:38:17

11:38:20

11:38:21

11:38:26

11:38:28

11:38:31

11:38:35

11:38:38

11:38:40

11:38:40

11:38:44

11:38:50

11:38:52

11:38:58

11:39:01

11:39:04

11:39:06

11:39:07

11:39:09

11:39:11

11:39:16

11:39:21

11:39:24

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1 regard to Sudan as "dire"?

11:39:27

2 A. By dire, what I meant was, obviously, if  
3 the paperwork arrived at the Department of Homeland  
4 Security after the deadline for the Secretary to  
5 make a decision, that's what I'm describing as  
6 dire.

11:39:29

11:39:37

11:39:42

11:39:44

11:39:49

7 Q. Do you recall who ultimately -- well, do  
8 you recall whether the State Department ultimately  
9 provided a recommendation with regard to Sudan?

11:39:49

11:39:53

11:40:00

10 A. I do. They did, yes.

11:40:03

11 Q. Do you recall who provided the  
12 recommendation?

11:40:05

11:40:07

13 A. I believe it was Deputy Secretary  
14 Sullivan.

11:40:07

11:40:09

15 Q. In your recollection, was it atypical for  
16 the Deputy Secretary rather than the Secretary to  
17 provide a recommendation?

11:40:12

11:40:15

11:40:17

18 MR. KIRSCHNER: Objection, foundation,  
19 speculative.

11:40:19

11:40:21

20 A. You know, as a longtime employee of the  
21 Department of State, the Deputy Secretary acts in  
22 the name of the Secretary when the Secretary is  
23 unable to perform his duties for whatever reason,  
24 so he has signing authorities for the Secretary.  
25 So I don't know what the internal dynamic was

11:40:22

11:40:29

11:40:32

11:40:34

11:40:37

11:40:39

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1	leading to Deputy Secretary Sullivan signing rather	11:40:43
2	than Secretary Tillerson.	11:40:47
3	Q. Were you ever privy to any conversations	11:40:48
4	about why the Deputy Secretary of State engaged	11:40:51
5	rather than the Secretary on TPS for Sudan?	11:40:53
6	A. Not that I recall.	11:40:55
7	Q. You described the DHS Secretary being	11:41:14
8	particularly interested in the State Department's	11:41:19
9	recommendations concerning Sudan and Central	11:41:21
10	America. Are you describing Secretary Duke's	11:41:25
11	strong interest in that or the Secretary's office	11:41:29
12	generally?	11:41:32
13	MR. KIRSCHNER: Objection, confusing.	11:41:35
14	A. Certainly her -- her staff, her Chief of	11:41:38
15	Staff whose job it is to ensure that the Secretary	11:41:44
16	is properly staffed, especially for consequential	11:41:47
17	decisions, he expressed in strong terms the need to	11:41:51
18	get the paperwork. But I believe that Secretary	11:41:55
19	Duke, I believe I also had a conversation with her	11:41:59
20	about it. She wanted to see that input before she	11:42:03
21	made her decision. It was important to her	11:42:07
22	personally to see and consider that information.	11:42:13
23	Q. Was Secretary Nielsen concerned about	11:42:15
24	getting the State Department's input prior to	11:42:20
25	making a determination regarding TPS?	11:42:23

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1	A. So I don't recall the same drama with	11:42:27
2	Secretary Nielsen that I recall specifically in the	11:42:33
3	case of Sudan and Central America with Acting	11:42:36
4	Secretary Duke.	11:42:46
5	Q. What do you recall --	11:42:46
6	MS. MacLEAN: Scratch that.	11:42:52
7	Q. When Secretary Nielsen was Secretary, did	11:42:54
8	you have any conversations with Secretary Nielsen	11:42:58
9	regarding the State Department recommendations for	11:43:00
10	TPS?	11:43:02
11	A. I don't recall any specific conversations.	11:43:02
12	Q. Do you recall any conversations with	11:43:09
13	Secretary Nielsen's office regarding the State	11:43:13
14	Department's recommendations?	11:43:19
15	A. No. And, again, I simply don't remember	11:43:20
16	that -- that -- I don't recall it being an issue	11:43:27
17	during Secretary Nielsen's time that we couldn't	11:43:32
18	get the paperwork out of the Department of State as	11:43:35
19	it was an issue during Secretary Duke's time. So I	11:43:37
20	just don't recall it coming.	11:43:42
21	Q. Do you recall any communications with the	11:43:49
22	State Department concerning the timeliness of their	11:43:52
23	response during Secretary Nielsen's tenure while	11:43:54
24	you were at the Department?	11:43:57
25	A. You know, sometimes it's just hard for me	11:43:58

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1 to remember when -- who was Secretary at a specific  
2 time.

11:44:04  
11:44:06

3 Q. Um-hum.

11:44:07

4 A. So I've described the drama surrounding  
5 the timeliness of the paperwork on Sudan and then  
6 on Central America, and I believe Acting Secretary  
7 Duke was the Acting Secretary during both of those  
8 periods of time. So again I just don't recall it  
9 being an issue -- that State Department paperwork  
10 being an issue during Secretary Nielsen's time.

11:44:07  
11:44:12  
11:44:16  
11:44:19  
11:44:24  
11:44:27  
11:44:29

11 Q. Do you know what the basis was of the  
12 State Department --

11:44:32  
11:44:35

13 MS. MacLEAN: Let's step back.

11:44:37

14 Q. Do you know what the process was for the  
15 State Department coming up with their  
16 recommendations regarding TPS determinations?

11:44:38  
11:44:40  
11:44:42

17 MR. KIRSCHNER: Objection, calls for  
18 speculation.

11:44:47  
11:44:49

19 A. Yeah, I don't know the specifics of  
20 their -- of their internal process.

11:44:50  
11:44:52

21 Q. Do you know generally what the process  
22 was?

11:44:54  
11:44:56

23 A. So -- yes. So the State Department would  
24 make a recommendation to the Secretary of State,  
25 which the Secretary of State could either accept or

11:44:56  
11:45:05  
11:45:10

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1 reject. And that recommendation that went up to 11:45:14  
2 the Secretary's office would go through a clearance 11:45:21  
3 process within the Department of State so that all 11:45:26  
4 of the various elements and entities within the 11:45:29  
5 Department of State that had equities in the 11:45:31  
6 decision would have their input. I described 11:45:34  
7 earlier that the embassy would provide input to the 11:45:37  
8 Department of State, the Bureau of Western 11:45:42  
9 Hemisphere Affairs would provide input and 11:45:46  
10 certainly the Bureau of Population, Refugee and 11:45:50  
11 Migration would provide input. But who would 11:45:55  
12 actually write the memo to the Secretary of State, 11:45:58  
13 I'm not sure. 11:46:01

14 Q. Do you know what the basis was for the 11:46:02  
15 recommendation that came from the Department of 11:46:05  
16 State or what considerations were at issue? 11:46:06

17 MR. KIRSCHNER: Objection, calls for 11:46:08  
18 speculation. 11:46:17

19 A. Yeah, very difficult question to answer. 11:46:17  
20 I mean, in broad terms certainly the statute, what 11:46:19  
21 does the statute say, and then foreign policy 11:46:25  
22 considerations, the Department of State manages the 11:46:29  
23 foreign policy of the United States, so that's 11:46:32  
24 their equity in the decision. 11:46:34

25 Q. From your experience at the embassy, you 11:46:36

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1 described this to some degree, and you also, I  
2 imagine, saw this in some capacity in your position  
3 as DHS, but did the State Department typically  
4 consider the recommendations of diplomats in making  
5 a recommendation concerning TPS?

6 MR. KIRSCHNER: Objection, calls for  
7 speculation, vague. Compound.

8           A. So generally speaking, an ambassador's  
9        input carries a tremendous amount of weight in the  
10      Department of State. So for the Department of  
11      State to reject an ambassador's recommendation and  
12      make a different recommendation to the Secretary of  
13      State, there would generally be a lot of discussion  
14      with the ambassador about that. And so, as I say,  
15      an ambassador's recommendation carries a lot of  
16      weight.

17 Q. You said there would generally be a  
18 significant amount of discussion if the State  
19 Department was to reject a recommendation from the  
20 ambassador. Typically, who would that discussion  
21 be between?

22 MR. KIRSCHNER: Objection, vague, calls  
23 for speculation.

24           A. So in my experience, the way that would  
25 normally work is if the ambassador would make a

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1 recommendation to the Bureau of Western Hemisphere 11:48:12  
2 Affairs and Department of State and if that bureau 11:48:18  
3 didn't agree with the ambassador's recommendation, 11:48:21  
4 then they would engage with the ambassador at a 11:48:24  
5 fairly high level, at least at a deputy Assistant 11:48:28  
6 Secretary level or perhaps even an Assistant 11:48:31  
7 Secretary level to see if they could come to some 11:48:33  
8 compromise or agreement on a recommendation that 11:48:35  
9 would then go forward to the Department of State. 11:48:38  
10 That's my experience. 11:48:42

11 Q. Do you recall whether the ambassadors of 11:48:44  
12 the countries that are currently designated for TPS 11:48:53  
13 weighed into the DOS decision-making process with 11:48:56  
14 regard to TPS? 11:49:00

15 MR. KIRSCHNER: Objection, vague. 11:49:02

16 Q. While you were at DHS? 11:49:04

17 MR. KIRSCHNER: Objection, vague, it's 11:49:05  
18 confusing as to timing, calls for speculation. 11:49:07

19 A. So I know that some did. I know that our 11:49:09  
20 ambassadors in Honduras and El Salvador, for 11:49:16  
21 example, made recommendations to the Department of 11:49:20  
22 State, and I would assume that other embassies did 11:49:24  
23 as well. I would assume that they were asked and 11:49:28  
24 then provided such a recommendation. That would be 11:49:30  
25 standard procedure. 11:49:33

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1 Q. So you said that you have direct knowledge  
2 that the ambassador for Honduras weighed in. How  
3 do you have that knowledge?

11:49:34  
11:49:39  
11:49:44

4 MR. KIRSCHNER: Objection, assumes facts  
5 not in evidence, and foundation. That's not the  
6 exact words that Ambassador Nealon said.

11:49:45  
11:49:47  
11:49:52

7 A. So I believe I recall seeing the input  
8 from our embassies in El Salvador and Honduras.

11:49:55  
11:49:57

9 Q. In what form --

11:50:02

10 A. It --

11:50:03

11 Q. Sorry.

11:50:04

12 A. I believe I saw -- sorry.

11:50:05

13 Q. I think I interrupted you. You were about  
14 to say something further, so I'll let you finish  
15 that thought before I ask the follow-up question.

11:50:07  
11:50:09  
11:50:13

16 A. At least in case of El Salvador, I believe  
17 I recall seeing that recommendation in cable form,  
18 I believe.

11:50:15  
11:50:21  
11:50:24

19 Q. And do you recall what input the  
20 ambassador for Honduras had?

11:50:27  
11:50:31

21 MR. KIRSCHNER: Objection. To the extent  
22 this calls for internal government deliberations, I  
23 would instruct you not to answer under the  
24 deliberative process privilege.

11:50:34  
11:50:35  
11:50:39  
11:50:41

25 MS. MacLEAN: So we'll step back before we

11:50:45

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1 get close to the deliberative process privilege,  
2 but you can obviously suggest otherwise.

11:50:47  
11:50:51

3 Q. Did you see the type of communication that  
4 the ambassador -- well, did you see -- did the  
5 ambassador of Honduras himself weigh into the TPS  
6 decision-making process for Honduras?

11:50:53  
11:50:55  
11:50:58  
11:51:03

7 MR. KIRSCHNER: Objection, vague as to --  
8 objection, vague.

11:51:05  
11:51:08

9 A. Yeah, so after my departure, we still  
10 don't have an ambassador, we have a chargé  
11 d'affaires, but she did weigh in on the TPS  
12 decision, yes.

11:51:09  
11:51:14  
11:51:17  
11:51:20

13 Q. And do you know the form in which the  
14 chargé d'affaires weighed into that process?

11:51:22  
11:51:25

15 A. I don't recall whether it was cable or  
16 e-mail.

11:51:30  
11:51:32

17 Q. Do you recall whether you saw the cable or  
18 e-mail?

11:51:32  
11:51:34

19 A. I believe I did.

11:51:36

20 Q. How did you see the cable or e-mail?

11:51:37

21 A. I don't recall how it arrived in my inbox,  
22 whether it was e-mailed to me or whether I read a  
23 hard copy, I don't recall.

11:51:41  
11:51:47  
11:51:50

24 Q. And the same question for the  
25 communication -- sorry -- was it a communication

11:51:51  
11:51:54

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1 directly from the Ambassador of El Salvador that  
2 you saw?

11:51:57  
11:52:01

3 A. I believe I saw a communication directly  
4 from our ambassador in El Salvador making a  
5 recommendation, yes.

11:52:02  
11:52:04  
11:52:08

6 Q. And you stated previously that you thought  
7 that that recommendation was in cable form from the  
8 Ambassador of El Salvador?

11:52:09  
11:52:20  
11:52:23

9 A. I believe it was.

11:52:24

10 Q. Do you recall how you saw the cable from  
11 the Ambassador of El Salvador?

11:52:24  
11:52:27

12 A. Again, I don't recall whether I saw it on  
13 my computer or whether I saw a hard copy.

11:52:27  
11:52:30

14 Q. Can you recall generally what the  
15 recommendation was from the ambassador -- sorry --  
16 the chargé d'affaires in Honduras?

11:52:32  
11:52:38  
11:52:44

17 MR. KIRSCHNER: Objection to the extent  
18 that this calls for internal government  
19 deliberations. I would instruct you not to answer  
20 under the deliberative process privilege. I object  
21 to the question -- excuse me. Let me start over.

11:52:48  
11:52:58  
11:52:58  
11:52:58  
11:53:00

22 Objection to the question asked to the  
23 extent it asks for internal government  
24 deliberations. I object under the deliberative  
25 process privilege.

11:53:03  
11:53:05  
11:53:07  
11:53:09

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1 Q. Do you think you can answer the question  
2 without disclosing deliberative process?

11:53:12  
11:53:14

3 MR. KIRSCHNER: Objection. Calls for a  
4 legal conclusion. Again, I instruct you not to  
5 answer to the extent it calls for internal  
6 government deliberations.

11:53:17  
11:53:19  
11:53:22  
11:53:27

7 MS. MacLEAN: So I will leave aside the  
8 questions related to the specific communications  
9 from the embassy in Honduras and the embassy in El  
10 Salvador, recognizing that that question is -- that  
11 that issue is still being resolved by the court.

11:53:27  
11:53:29  
11:53:31  
11:53:36  
11:53:37

12 MR. KIRSCHNER: Understood.

11:53:40

13 Q. Do you know why you received the  
14 recommendations from the embassies in Honduras and  
15 El Salvador?

11:53:51  
11:53:53  
11:53:56

16 A. Yes. It would be absolutely natural that  
17 I did and unnatural if I didn't. As the  
18 international affairs person for the Department of  
19 Homeland Security, one of my jobs was to have close  
20 communications with our embassies around the world,  
21 particularly on issues of consequence to the  
22 Department like TPS.

11:53:58  
11:54:02  
11:54:06  
11:54:10  
11:54:13  
11:54:18  
11:54:21

23 Q. So would you have received those  
24 communications directly from the embassy, or would  
25 you have received them indirectly through the State

11:54:22  
11:54:26  
11:54:31

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1	Department or in some other way?	11:54:35
2	A. Again, I just don't recall how I received those communications.	11:54:36
3		11:54:38
4	Q. Was there -- to your knowledge, was there anyone else in the Department of Homeland Security	11:54:39
5		11:54:41
6	who would also receive those kinds of	11:54:43
7	communications from the embassies?	11:54:46
8	A. I would assume that members of my staff	11:54:48
9	would have seen those.	11:54:58
10	Q. Um-hum.	11:54:59
11	A. Certain members of my staff.	11:55:01
12	Q. And when you say would have received	11:55:03
13	those, are you referring to cables with	11:55:06
14	recommendations -- sorry -- when you say you and	11:55:11
15	members of your staff would have received these	11:55:13
16	communications from embassies, are you referring to	11:55:16
17	cables, e-mails and other communications concerning	11:55:20
18	recommendations from embassies about TPS	11:55:24
19	determinations?	11:55:26
20	A. Yes. So to be clear, it's -- if those	11:55:27
21	recommendations were cabled, then -- then certainly	11:55:31
22	certain members of my staff would have had access	11:55:37
23	to those cables and would have seen them.	11:55:40
24	If those recommendations were e-mailed,	11:55:42
25	then it's a lot less likely that members of my	11:55:44

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1 staff would have been copied on those e-mails.

11:55:48

2 Q. And why would members of your staff be  
3 more likely to have received the cables?

11:55:52

4 A. Because a cable is a formal process and  
5 there's a -- there's a formal way to get access to  
6 State Department cables; whereas an e-mail, as you  
7 know, is directed from a sender to a recipient and  
8 very unlikely that ambassadors at our embassies  
9 would have sent those e-mails to members of my  
10 staff. They would have sent them to me, but they  
11 wouldn't have sent them to members of my staff.

11:55:56

12 Q. And you said there's a formal way to  
13 receive cables. What is the formal way to receive  
14 cables?

11:55:57

15 A. I don't really know what the formal way to  
16 receive cables is. But the State Department cables  
17 can be accessed by lots of different U.S.  
18 government agencies.

11:56:00

19 Q. And is the DHS Office of Policy one of  
20 those agencies that can regularly access cables --

11:56:03

21 A. Certain members of the Office of Policy  
22 have access to State Department cables.

11:56:06

23 Q. And to your knowledge, who were those  
24 members?

11:56:09

25 A. I don't know who those members were.

11:56:12

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1	Q. You were one of those members?	11:56:53
2	A. I did not have easy access to State	11:56:55
3	Department cables, believe it or not, and often	11:56:58
4	depended on the kindness of strangers to -- to see	11:57:01
5	communications.	11:57:04
6	Q. Were the strangers who offered their	11:57:05
7	kindness in accessing State Department cables	11:57:08
8	within the DHS Office of Policy?	11:57:11
9	A. Often what would happen is that the	11:57:13
10	senders of the cables from our embassies overseas	11:57:16
11	would copy me on those cables or they would tell me	11:57:20
12	look for this cable, and I would have one of my	11:57:27
13	staff members look for it and get me a copy of the	11:57:29
14	cable.	11:57:33
15	Q. But is it fair to say from what you're	11:57:33
16	describing that one of your staff members could get	11:57:36
17	access to those State Department -- sorry -- could	11:57:39
18	get access to one of those embassy cables if you	11:57:41
19	wanted or needed that?	11:57:45
20	A. Yes.	11:57:47
21	MR. KIRSCHNER: Objection. I was going to	11:57:47
22	say objection, foundation, putting words in	11:57:49
23	Ambassador Nealon's mouth. Let Ambassador Nealon	11:57:51
24	speak for himself.	11:58:01
25	A. Yes.	11:58:02

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1	Q. And so you recalled having seen either	11:58:03
2	communications regarding TPS in cable or e-mail	11:58:05
3	form for Honduras and El Salvador. Do you	11:58:08
4	recall -- is that correct?	11:58:13
5	A. Yes.	11:58:14
6	Q. Do you recall having seen cables regarding	11:58:14
7	any other country that was up for review for TPS	11:58:17
8	during the time that you were there?	11:58:22
9	A. I don't recall seeing any other embassy	11:58:30
10	communications, no.	11:58:35
11	Q. Do you recall any communications with the	11:58:36
12	Sudanese embassy or diplomats that are charged with	11:58:39
13	issues related to Sudan?	11:58:47
14	A. No.	11:59:00
15	Q. Do you recall seeing any cables or e-mails	11:59:00
16	or communications from the embassy in Haiti?	11:59:03
17	A. No.	11:59:05
18	Q. And same question with regard to	11:59:21
19	Nicaragua.	11:59:27
20	A. I remember having some communication with	11:59:31
21	our ambassador in Nicaragua, but I don't recall	11:59:36
22	whether I actually saw her input on whether or not	11:59:45
23	TPS should be extended for Nicaragua.	11:59:47
24	Q. Do you recall approximately when you had	11:59:50
25	communication with the Ambassador in Nicaragua	11:59:55

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1 regarding TPS?

11:59:59

2 A. No. But it would have been in the -- in  
3 the short period of time leading up to the deadline  
4 for the Secretary to make a decision.

12:00:00

12:00:02

12:00:05

5 Q. I imagine this will draw a deliberative  
6 process privilege exception from your counsel, but  
7 do you recall what the communication was with the  
8 Ambassador in Nicaragua?

12:00:07

12:00:11

12:00:14

12:00:17

9 MR. KIRSCHNER: So I'm going to object,  
10 but I'm going to ask, Ambassador Nealon, you had  
11 said in your response that you do not remember a  
12 recommendation, so to the extent this is calling  
13 for internal government deliberations, I would  
14 instruct you not to answer. To the extent there's  
15 a general answer that can provide a response to the  
16 question, you could provide such a response.

12:00:18

12:00:19

12:00:22

12:00:25

12:00:29

12:00:40

12:00:34

12:00:37

17 A. Yeah, I don't recall what her  
18 recommendation was. I don't recall seeing a  
19 recommendation, so I don't recall what her  
20 recommendation was.

12:00:44

12:00:45

12:00:47

12:00:49

21 Q. Do you recall what the recommendation was  
22 from the Deputy Secretary of State concerning the  
23 TPS determination of Sudan?

12:00:50

12:01:00

12:01:07

24 A. Yes.

12:01:11

25 Q. What was the recommendation?

12:01:12

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1	A. Extension.	12:01:13
2	Q. Do you recall communications with Acting	12:01:14
3	Secretary Duke concerning the State Department's	12:01:18
4	recommendation?	12:01:19
5	MR. KIRSCHNER: Objection, vague, and lack	12:01:21
6	of foundation of who is -- you're talking about --	12:01:25
7	counsel is talking about when referring to	12:01:28
8	communications.	12:01:30
9	Q. Do you recall communications that you had	12:01:31
10	directly with the Acting Secretary of State	12:01:32
11	concerning the Department of State's recommendation	12:01:35
12	to extend TPS for Sudan?	12:01:39
13	MR. KIRSCHNER: Objection, confusing. I	12:01:42
14	think you referred to Acting Secretary of State.	12:01:45
15	MS. MacLEAN: Let me start again.	12:01:48
16	Q. Did you have communications with Acting	12:01:50
17	Secretary Duke concerning the Deputy Secretary of	12:01:56
18	State's recommendation to extend TPS for Sudan?	12:01:59
19	A. So what I recall regarding the decision on	12:02:02
20	Sudan was that all of my discussions were about	12:02:06
21	needing this paperwork. I don't recall a	12:02:17
22	substantive conversation with Acting Secretary Duke	12:02:21
23	about the merits of the case.	12:02:25
24	Q. Do you recall any communications with the	12:02:29
25	-- with anyone at the Department of State	12:02:39

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1	concerning the merits of their recommendation --	12:02:41
2	the State Department's recommendation concerning	12:02:46
3	TPS for Sudan?	12:02:49
4	A. Yeah. And, again, it's difficult for me	12:02:54
5	to separate, you know, phone conversations from a	12:02:56
6	long time ago. But I believe -- I believe I had a	12:03:00
7	conversation with a Deputy Assistant Secretary in	12:03:07
8	the Bureau of African Affairs about the merits of	12:03:10
9	the Sudan case. But I don't recall his name at the	12:03:17
10	moment.	12:03:20
11	Q. Do you recall -- do you recall whether you	12:03:21
12	initiated that communication or whether someone	12:03:26
13	from the State Department initiated that	12:03:28
14	communication?	12:03:30
15	A. I don't recall.	12:03:31
16	Q. Do you recall what you communicated during	12:03:33
17	that communication?	12:03:39
18	MR. KIRSCHNER: Objection. To the extent	12:03:39
19	it calls for internal government deliberations, I	12:03:41
20	would instruct you not to answer under the	12:03:45
21	deliberative process privilege.	12:03:46
22	MS. MacLEAN: I would assume the same	12:03:49
23	would apply for the question about what the	12:03:51
24	communication was from the State Department side	12:03:53
25	regarding Sudan?	12:03:56

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1	MR. KIRSCHNER: Again, I'd object under	12:03:57
2	the deliberative process privilege to the extent	12:03:59
3	this calls for internal government deliberations.	12:04:02
4	Q. Do you recall any substantive	12:04:07
5	conversations with the Department of State	12:04:09
6	regarding any of the other TPS determinations,	12:04:11
7	again, distinguishing here between communications	12:04:14
8	with the State Department about the timeliness of	12:04:17
9	their response from substantive communications	12:04:19
10	about what their recommendation might be or what	12:04:22
11	factors would go into their recommendation?	12:04:24
12	A. Yes.	12:04:26
13	Q. About which countries?	12:04:26
14	A. I recall conversations about El Salvador	12:04:35
15	and Honduras -- El Salvador and Honduras. I	12:04:37
16	believe Syria, also.	12:04:49
17	Q. Do you recall -- well, are these separate	12:04:50
18	conversations that you're recalling?	12:04:57
19	A. You know, I had a number of conversations	12:04:58
20	with the Department of State about -- about those	12:05:01
21	countries.	12:05:03
22	Q. So let's start with El Salvador.	12:05:04
23	Do you recall with whom you communicated	12:05:08
24	at the Department of State concerning substantive	12:05:10
25	issues related to the State Department's input	12:05:14

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1 concerning TPS for El Salvador?

12:05:17

2 A. Yeah. Generally, I would have

12:05:19

3 communicated with the Deputy Assistant Secretary in  
4 the Bureau of Western Hemisphere Affairs whose name  
5 is John Creamer, C-r-e-a-m-e-r.

12:05:21

12:05:27

12:05:31

6 Q. And Deputy Assistant Secretary in Western  
7 Hemisphere Affairs?

12:05:39

12:05:43

8 A. Yes.

12:05:43

9 Q. Do you recall approximately how many times  
10 you communicated with him regarding the State  
11 Department's input in the TPS determination of El  
12 Salvador?

12:05:48

12:05:51

12:05:52

13 A. I don't.

12:05:52

14 Q. Do you recall the role of Mr. Creamer in  
15 the -- in crafting the recommendation from the  
16 State Department to the Department of Homeland  
17 Security concerning TPS?

12:05:56

12:06:00

12:06:03

18 A. So, again, I don't know precisely what the  
19 State Department's process was for drafting their  
20 -- their recommendation to the Secretary, but John  
21 Creamer was the Deputy Assistant Secretary of State  
22 for Mexico and Central America. So he would have  
23 been -- he probably would have been the person in  
24 touch with our embassies, gathering their input and  
25 would have been -- he and his staff would have been

12:06:04

12:06:09

12:06:12

12:06:18

12:06:20

12:06:25

12:06:32

12:06:36

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1 drafting the Bureau of Western Hemisphere's input  
2 into the Secretary's recommendation.

12:06:40

3 Who actually drafted the memo to the  
4 Secretary, I don't know.

12:06:45

5 Q. Do you know if Mr. Creamer is a political  
6 appointee or a career State Department employee?

12:06:49

12:06:51

7 A. He's a career State Department employee.

12:06:52

8 Q. Do you know how long he's been in the  
9 State Department, roughly?

12:06:56

12:06:58

10 A. 30 some years.

12:07:00

12:07:02

11 Q. Can you describe in general terms your  
12 communications with Mr. Creamer concerning TPS for  
13 El Salvador?

12:07:04

12:07:07

12:07:13

12:07:17

14 MR. KIRSCHNER: Objection. To the extent  
15 that this calls for internal government  
16 deliberations, I instruct you not to answer. To  
17 the extent you can provide a general answer in a  
18 way that does not respond to internal government  
19 deliberations, feel free to do so.

12:07:17

12:07:19

12:07:22

12:07:25

12:07:27

12:07:31

20 A. So these conversations were sort of the  
21 definition of deliberative in that I would call him  
22 or he would call me, and we would discuss the  
23 process and we would discuss where we thought the  
24 Department of State would eventually end up in  
25 terms of a decision because that was important

12:07:32

12:07:34

12:07:38

12:07:43

12:07:50

12:07:52

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1 information for me to have so that I could  
2 communicate that to the Secretary of Homeland  
3 Security.

12:07:54  
12:07:56  
12:08:09

4 MS. MacLEAN: I would ask further  
5 questions concerning the details of those  
6 conversations. I understand that you're asserting  
7 a deliberative process privilege and that that  
8 issue is still outstanding with the court.

12:08:09  
12:08:09  
12:08:09  
12:08:11  
12:08:14

9 MR. KIRSCHNER: I would object to any of  
10 the questions concerning the details of those  
11 conversations, about what those internal  
12 deliberations were under the deliberative process  
13 privilege.

12:08:14  
12:08:15  
12:08:17  
12:08:19  
12:08:23

14 Q. So I'm going to ask you the same series of  
15 questions with regard to Honduras.

12:08:23  
12:08:28

16 With whom did you communicate on  
17 substantive matters concerning the State  
18 Department's recommendation into the TPS  
19 determination for Honduras for -- yeah, for  
20 Honduras?

12:08:29  
12:08:31  
12:08:34  
12:08:37  
12:08:40

21 A. Yes. So I would have communicated, again,  
22 with Mr. Creamer, as well as with Mr. Henshaw  
23 because it's important to understand that those are  
24 the two key bureaus that the Department of State --  
25 that would provide input to the Secretary on

12:08:41  
12:08:43  
12:08:51  
12:08:53  
12:08:59

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1	temporary protected status. So I was talking to	12:09:01
2	both of those bureaus.	12:09:04
3	Q. And do you recall if Mr. Henshaw is a	12:09:06
4	political appointee or a career appointee?	12:09:08
5	A. Career officer.	12:09:12
6	Q. A career officer.	12:09:14
7	Can you describe in general terms what	12:09:20
8	kinds of communications you had on the substantive	12:09:22
9	recommendation concerning the TPS determination for	12:09:25
10	Honduras with Mr. Creamer or Mr. Henshaw?	12:09:32
11	A. So absolutely deliberative in nature.	12:09:35
12	Again, me trying to get information on when we	12:09:38
13	could expect the paperwork and what we could expect	12:09:45
14	the paperwork to say.	12:09:47
15	Q. And based on the prior communications from	12:09:56
16	your counsel, I will hold off on further questions	12:09:58
17	concerning the details of the conversations you had	12:10:02
18	with Mr. Creamer and Mr. Henshaw concerning the TP	12:10:08
19	-- the State Department's recommendation on TPS for	12:10:11
20	Honduras with the understanding that that may come	12:10:13
21	up in the future, depending on how the court	12:10:15
22	resolves this issue, with apologies for your time.	12:10:19
23	With regard to Syria, whom did you	12:10:22
24	communicate with regarding substantive issues	12:10:25
25	concerning the State Department's recommendations	12:10:27

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1	concerning Syria?	12:10:30
2	A. You know, I may have to walk that back.	12:10:32
3	Now that I think about it, I don't recall	12:10:43
4	communicating directly with Department of State	12:10:47
5	about Syria.	12:10:49
6	Q. So besides El Salvador, Honduras and	12:11:01
7	Sudan, were there other countries that were up for	12:11:04
8	TPS review during your tenure at DHS where you	12:11:08
9	communicated with the State Department on	12:11:13
10	substantive matters related to the State	12:11:14
11	Department's recommendation?	12:11:17
12	A. Yes. So I recall having some	12:11:24
13	conversations about Haiti -- yeah, Haiti.	12:11:28
14	Q. And with whom did you communicate at the	12:11:48
15	State Department concerning substantive matters	12:11:50
16	related to Haiti's TPS determination?	12:11:54
17	A. So I had far fewer conversations with the	12:11:56
18	State Department related to Haiti than I did	12:11:58
19	related to Central America, but I would have	12:12:01
20	communicated with a gentleman named Ken Merten. I	12:12:03
21	believe it's M-e-r-t-e-n, I think.	12:12:09
22	Q. And is that Ken or Kent?	12:12:13
23	A. Ken, no T. And he's a Deputy Assistant	12:12:14
24	Secretary of State in the Bureau of Western	12:12:22
25	Hemisphere Affairs.	12:12:34

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1	Q. Do you recall if he's a career officer or	12:12:34
2	political appointee?	12:12:37
3	A. Career officer.	12:12:38
4	Q. Do you recall when you had communications	12:12:39
5	with Mr. Merten?	12:12:41
6	A. Not specifically, no.	12:12:46
7	Q. Do you recall in general terms the subject	12:12:56
8	matter of your communications with Mr. Merten?	12:12:58
9	A. Yes. You know, by the time I got to	12:13:01
10	Homeland Security, there was a general feeling that	12:13:13
11	TPS for Honduras -- I'm sorry, for Haiti was going	12:13:24
12	to be terminated, and so I believe I had	12:13:25
13	conversations with Mr. Merten about -- about the	12:13:32
14	decision itself and about what the implications of	12:13:36
15	that decision might be for U.S. policy and what	12:13:40
16	sorts of things we could do to help mitigate the	12:13:43
17	consequences of that decision.	12:13:47
18	Q. You said that by the time you got to DHS	12:13:48
19	in early July, there was a general feeling that TPS	12:13:53
20	for Haiti was going to be terminated.	12:13:58
21	In your recollection, what created that	12:14:01
22	general feeling?	12:14:03
23	A. I don't recall anything specific. I just	12:14:03
24	recall when I came on board that that was my	12:14:10
25	feeling and observation.	12:14:15

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1 Q. So you then described your communications  
2 with Mr. Merten as essentially having the backdrop  
3 of an expected termination of TPS for Haiti?

12:14:17  
12:14:29  
12:14:33

4 A. That's my recollection.

12:14:36

5 Q. Is it your recollection that that general  
6 feeling around the likely imminent end of TPS for  
7 Haiti was from the very beginning of your tenure at  
8 DHS?

12:14:37  
12:14:38  
12:14:45  
12:14:48

9 A. I do recall that, because I recall that --  
10 that I got that sense from General Kelly.

12:14:48  
12:14:54

11 Q. Did you have specific communications with  
12 General Kelly about that?

12:14:56  
12:14:59

13 MR. KIRSCHNER: Object. I mean, to the  
14 extent this is getting into internal government  
15 deliberations of your communications, I would  
16 instruct you not to answer.

12:15:00  
12:15:02  
12:15:06  
12:15:15

17 MS. MacLEAN: You can identify whether  
18 this is a question that you would instruct him not  
19 to answer or not.

12:15:15  
12:15:15  
12:15:15

20 Q. But did you have specific communications  
21 that you recall with General Kelly concerning the  
22 expected termination of TPS for Haiti?

12:15:19  
12:15:21  
12:15:26

23 A. I believe I had one conversation with him  
24 about Haiti and TPS.

12:15:29  
12:15:32

25 Q. And was that communication before he left

12:15:34

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1	the Department?	12:15:38
2	A. Yes.	12:15:39
3	Q. And was that communication related to the	12:15:40
4	expected end of TPS for Haiti?	12:15:51
5	A. You know what it was, it was a	12:15:53
6	conversation between two old friends.	12:15:58
7	Q. Um-hmm. Can you say anything further	12:16:04
8	about the conversation?	12:16:07
9	MR. KIRSCHNER: Again, I object --	12:16:07
10	A. It was deliberative.	12:16:08
11	Q. Okay.	12:16:12
12	MS. MacLEAN: I understand that lunch is	12:16:29
13	ready, so if you don't mind, we'll ask a few more	12:16:31
14	questions and then we take a break for lunch unless	12:16:35
15	you'd rather take a break right now?	12:16:38
16	MR. KIRSCHNER: Can we take a two-minute	12:16:38
17	break just to see where we are on timing and check	12:16:40
18	with Ambassador Nealon where he would want to take	12:16:43
19	a break.	12:16:48
20	MS. MacLEAN: No problem.	12:16:49
21	THE VIDEOGRAPHER: Time is 12:16. We are	12:16:50
22	off the record.	12:16:52
23	(Proceedings interrupted at 12:16 p.m. and	12:16:53
24	reconvened at 1:00 p.m.)	13:00:24
25	THE VIDEOGRAPHER: Time is 1:00 p.m. We	13:00:26

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1 are back on the record.

13:00:36

2 BY MS. MacLEAN:

13:00:37

3 Q. Ambassador Nealon, you had mentioned  
4 previously that you would check during the break  
5 about the key DHS Office of Policy staff who were  
6 involved in TPS decisions. Were you able to  
7 identify that?

13:00:38

13:00:41

13:00:44

13:00:49

13:00:52

8 MR. KIRSCHNER: Objection. I think that  
9 misrepresents Ambassador Nealon's testimony. I  
10 think he said that he would try to remember, not  
11 that he was going to be checking any documentation.

13:00:53

13:00:55

13:00:58

13:01:01

12 MS. MacLEAN: Fair enough.

13:01:04

13 Q. Are there now DHS Office of Policy staff  
14 who were involved in TPS decisions that you can  
15 recall?

13:01:05

13:01:07

13:01:10

16 A. So I think I can be pretty clear about  
17 this. So there aren't really Office of Policy  
18 staff involved in the TPS decisions, because the  
19 decision really is -- really was and really is the  
20 Secretary's decision. So there were -- and to the  
21 extent that the Secretary wanted the Office of  
22 Policy's opinions about TPS, she would come to me.  
23 So there are other people in the Office of Policy  
24 who would participate in meetings or, you know, get  
25 involved in some way, but it wouldn't be accurate

13:01:10

13:01:12

13:01:18

13:01:23

13:01:28

13:01:34

13:01:37

13:01:41

13:01:45

13:01:51

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1 to say that those people were involved in the TPS  
2 decision, I wouldn't say.

13:01:56

3 Q. And the --

13:02:00

4 A. So for example, there are people who would  
5 help arrange meetings when the Salvadorians or the  
6 Hondurans called and wanted to meet with the  
7 Secretary or meet with me, so they would get  
8 involved in that way. But I'm having a hard time  
9 thinking of other people in the Office of Policy  
10 who were really directly involved in the TPS  
11 decision process.

13:02:03

13:02:06

13:02:11

13:02:15

13:02:17

13:02:23

13:02:25

13:02:30

12 I would say with the exception of my Chief  
13 of Staff who I mentioned previously, Briana Petyo,  
14 who -- the Chief of Staff was sort of my alter ego,  
15 and so she would sometimes substitute for me at  
16 meetings and things like that. So she tended to  
17 know what I knew and vice versa.

13:02:32

13:02:37

13:02:40

13:02:45

13:02:47

13:02:50

18 Q. That's very helpful.

13:02:53

19 A. So I hope that's a better answer.

13:02:55

20 Q. That's a very fair answer, and I don't  
21 think we need further follow-up questions.

13:02:56

13:02:59

22 The one other item that I wanted to ask  
23 you about from before the break is that you had  
24 mentioned that when there are concerns from an  
25 ambassador, they wouldn't be easily rejected and

13:03:01

13:03:04

13:03:06

13:03:10

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1 there would be a response at a fairly high level at 13:03:14  
2 the State Department. Is that a reasonably fair 13:03:16  
3 reflection, or would you like to correct that 13:03:19  
4 reflection? 13:03:21

5 A. Yes. So we were talking specifically 13:03:22  
6 about TPS. And so when the State Department has to 13:03:24  
7 make a recommendation about something like TPS, 13:03:32  
8 they're in the first instance going to go to their 13:03:35  
9 eyes and ears on the ground in the country in 13:03:39  
10 question, which is their ambassador, and they're 13:03:42  
11 going to solicit their ambassador's opinion. And 13:03:45  
12 that opinion is going to carry a lot of weight. 13:03:47  
13 And if the State Department is going to make a 13:03:50  
14 recommendation to the Secretary contrary to the 13:03:52  
15 Ambassador's recommendation, that would be a thing 13:03:56  
16 that would have to be worked out between, for the 13:03:59  
17 most part, the geographic bureau, in this case the 13:04:05  
18 Bureau of Western Hemisphere Affairs and the 13:04:08  
19 ambassador. That's the point I was trying to make. 13:04:15

20 Q. And is it your understanding or your 13:04:17  
21 recollection that during your tenure at DHS, there 13:04:19  
22 were conflicts between the embassies, the 13:04:22  
23 ambassadors on the ground, and the State Department 13:04:24  
24 recommendation regarding TPS? 13:04:27

25 MR. KIRSCHNER: Objection. To the extent 13:04:29

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1 this is calling for internal deliberations within  
2 the government, I would instruct you not to answer.

13:04:31

3 (Exhibit 34, E-mail dated Monday, May 14,  
4 2018, 3:55 p.m., marked for identification.)

13:05:00

13:05:01

5 Q. I'll give you a moment to look at what has  
6 been marked as Exhibit 34.

13:05:01

13:05:04

7 And if you could just review up to "main  
8 conclusions," we'll cover that part first.

13:05:51

13:05:53

9 MR. KIRSCHNER: Sorry. Are you saying  
10 you're going to ask questions before "main  
11 conclusions" or questions --

13:05:57

13:05:58

13:06:02

12 MS. MacLEAN: Before "main conclusions."

13:06:03

13 MR. KIRSCHNER: Okay.

13:06:05

14 A. Okay.

13:06:38

15 Q. So first, what I think is a pretty basic  
16 question, the last bullet point in the list of  
17 bullet points on the top of page 2 speaks about  
18 diplomatic cables from the U.S. embassies in El  
19 Salvador, Haiti, and Honduras and identifies  
20 certain cables by numbers such as San Salvador 860.  
21 Do you recognize that numbering system or labeling  
22 system for diplomatic cables?

13:06:39

13:06:44

13:06:48

13:06:52

13:06:57

13:06:58

13:07:05

13:07:07

23 A. I do.

13:07:10

24 Q. Can you identify, starting at San Salvador  
25 860 dated July 7, 2017, what that would mean?

13:07:10

13:07:14

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1	A. So cables, which are official	13:07:17
2	communications between the Department of State and	13:07:20
3	its embassies overseas are numbered by year. So	13:07:24
4	San Salvador 860 would presumably be the 860th	13:07:31
5	cable that that embassy had sent in that calendar	13:07:36
6	year.	13:07:42
7	Q. And I presume the date is the date that	13:07:42
8	the cable was sent?	13:07:44
9	A. Correct.	13:07:46
10	Q. And the city, San Salvador, identifies	13:07:46
11	the --	13:07:56
12	A. Sorry. The sending post.	13:07:56
13	Q. Okay. Great.	13:07:57
14	Do you recognize any of the cables that	13:07:59
15	are identified there as cables that you had seen,	13:08:09
16	from your recollection?	13:08:11
17	A. So there's nothing in the cable numbering	13:08:12
18	system that would allow me to identify the subject	13:08:16
19	matter of the cable. But the bullet point says	13:08:19
20	that these are in fact the cables that were sent	13:08:21
21	from the U.S. embassies in those three countries to	13:08:24
22	the Department of State containing the ambassadors'	13:08:27
23	recommendations on TPS.	13:08:30
24	Q. Would you have been likely to see those	13:08:31
25	recommendations?	13:08:33

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1	A. So as I stated before, I do recall seeing	13:08:34
2	the cable from San Salvador. I remember seeing	13:08:40
3	either the cable or an e-mail copy from	13:08:45
4	Tegucigalpa; I don't recall seeing the	13:08:50
5	Port-au-Prince recommendation, though I may have.	13:08:52
6	Q. Do you know if the Department of Homeland	13:08:56
7	Security had those cables in its possession, where	13:09:00
8	those cables would be?	13:09:02
9	MR. KIRSCHNER: Objection, assumes facts	13:09:06
10	not in evidence, foundation.	13:09:08
11	A. So no, I'm not -- I'm not familiar enough	13:09:12
12	with how the Department of Homeland Security	13:09:15
13	archives cables so, no, I wouldn't know.	13:09:18
14	Q. Okay. So moving on, the next sentence	13:09:21
15	reads, "SFRC Democratic staff determined that then	13:09:28
16	Secretary Tillerson's recommendation that the	13:09:33
17	Department of Homeland Security, DHS, should	13:09:36
18	terminate the TPS designations for El Salvador,	13:09:39
19	Haiti, and Honduras was a result of an overtly	13:09:42
20	political process."	13:09:47
21	Is there anything in your knowledge of the	13:09:48
22	process that would identify the process as an	13:09:50
23	overtly political process?	13:09:53
24	MR. KIRSCHNER: Objection, calls for	13:09:55
25	speculation.	13:09:58

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1 A. So I'm not familiar enough with the  
2 process at the State Department, nor did I have  
3 first-hand visibility into the process at the State  
4 Department to really answer that question.

5 Q. Is there anything in your knowledge from  
6 your experience at DHS and communicating with the  
7 State Department that would give you an  
8 understanding that the process was in some way  
9 political?

10 MR. KIRSCHNER: Objection, asks for  
11 conjecture, for speculation.

12 A. So I did have conversations with people at  
13 the State Department that were deliberative in  
14 nature that touched on the question you're asking.

15 Q. So you can essentially recall some  
16 communications related to the political nature of  
17 the TPS recommendations from the State Department  
18 but would hold off answering because of the  
19 deliberative process privilege?

20 MR. KIRSCHNER: Objection,  
21 mischaracterizes his testimony. He just testified  
22 that he has deliberative conversations that may  
23 provide a response to the question, not whether  
24 that he accepts the premise of the question. To  
25 the extent that this calls for internal

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1 deliberations, I would instruct you not to answer, 13:11:38  
2 but I also object that the question was a 13:11:41  
3 mischaracterization of Ambassador Nealon's 13:11:43  
4 testimony. 13:11:47

5 Q. Just to make sure that I understand it 13:11:47  
6 well without going into deliberative process 13:11:49  
7 privilege communications at this time, would you 13:11:52  
8 elaborate, in general terms, what you had 13:11:54  
9 previously stated? 13:11:56

10 A. Yes. So in the conversations -- in some 13:11:58  
11 of the conversations that I had with people at the 13:12:02  
12 Department of State about TPS, we did discuss 13:12:05  
13 whether or not the process had been or was being 13:12:11  
14 politicized. 13:12:21

15 Q. Who did you have those conversations with? 13:12:24  
16 MR. KIRSCHNER: Again, I instruct 13:12:32  
17 Ambassador Nealon not to answer to the extent that 13:12:34  
18 they call for internal deliberations. You can 13:12:36  
19 answer generally the individuals you had 13:12:36  
20 conversations with about the process of TPS within 13:12:36  
21 the State Department, but the specifics of what you 13:12:42  
22 were talking with certain individuals about, I 13:12:44  
23 would instruct you not to answer. 13:12:46

24 A. So as I've already stated, there were a 13:12:51  
25 couple of people that I spoke to on a fairly 13:12:57

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1	regular basis at the State Department about TPS.	13:13:01
2	Q. And were those the people that you had the	13:13:04
3	conversations -- that you were previously	13:13:10
4	describing as related to whether or not the process	13:13:13
5	was or was being politicized?	13:13:17
6	A. Yes.	13:13:19
7	Q. Okay. So the next line reads, "That	13:13:20
8	process deliberately disregarded the counsel and	13:13:27
9	expertise of officials at the State Department and	13:13:30
10	the U.S. embassies in all three countries which	13:13:34
11	uniformly argued for an extension of the TPS	13:13:37
12	designations."	13:13:40
13	Did you understand the U.S. embassies	13:13:41
14	uniformly arguing for an extension of the TPS	13:13:46
15	designation?	13:13:49
16	MR. KIRSCHNER: Objection, again to the	13:13:50
17	extent this calls for internal deliberations,	13:13:51
18	including recommendations within the -- internal	13:13:53
19	recommendations within the government, I instruct	13:13:56
20	you not to answer under the deliberative process	13:13:58
21	privilege.	13:14:01
22	Q. So the next line reads, "SFRC Democratic	13:14:03
23	staff also determined that the White House Domestic	13:14:06
24	Policy Council sought repeatedly to influence the	13:14:11
25	outcome" -- sorry, "to influence the	13:14:14

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1 decision-making processes at the State Department 13:14:14  
2 and DHS in order to ensure a predetermined outcome, 13:14:16  
3 the termination of TPS designations for all three 13:14:20  
4 countries." 13:14:22

5 Are you familiar with the White House 13:14:25  
6 Domestic Policy Council? 13:14:27

7 A. Yes. 13:14:28

8 Q. How are you familiar with the Domestic 13:14:29  
9 Policy Council? 13:14:33

10 A. I'm generally pretty familiar with the 13:14:33  
11 organization of the U.S. government. And during my 13:14:34  
12 time at DHS, I was in meetings where they were also 13:14:37  
13 present, members of the Domestic Policy Council 13:14:41  
14 were also present. 13:14:44

15 Q. Do you recall who from the Domestic Policy 13:14:45  
16 Council was present in the meetings in which you 13:14:48  
17 were present? 13:14:50

18 A. I won't remember every time I was in a 13:14:51  
19 meeting where members of the Domestic Policy 13:14:54  
20 Council were present, because I don't know who all 13:14:58  
21 -- who they all are. 13:15:00

22 I was in meetings, a couple of meetings 13:15:01  
23 with Stephen Miller, with a gentleman named John 13:15:04  
24 Zadrozny, if I have that correct, Z -- somebody 13:15:12  
25 will have to help me, Z-a-d-r-o-z-n-y; is that 13:15:13

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1	correct?	13:15:21
2	Q. I think that's correct, but we can check	13:15:21
3	during the break and confirm.	13:15:24
4	A. And I know there were other members of the	13:15:25
5	Domestic Policy Council at times present in	13:15:28
6	meetings where I was present.	13:15:29
7	Q. In the meetings that you were present	13:15:31
8	where the Domestic Policy Council was -- members of	13:15:33
9	the Domestic Policy Council or people that you	13:15:35
10	thought were connected to the Domestic Policy	13:15:35
11	Counsel were present, was TPS ever discussed?	13:15:39
12	A. So I don't remember specific instances	13:15:41
13	where TPS was discussed, though it's -- though it's	13:15:43
14	possible.	13:15:48
15	Q. Do you recall any experiences or	13:15:48
16	information that you have from your time at DHS	13:15:58
17	that would suggest that the White House Domestic	13:16:02
18	Policy Council sought to influence the	13:16:07
19	decision-making processes at the State Department	13:16:08
20	and DHS?	13:16:10
21	MR. KIRSCHNER: Objection. To the extent	13:16:11
22	this calls for internal government deliberations, I	13:16:12
23	would instruct you not to answer. To the extent	13:16:15
24	you can provide general input about -- just	13:16:17
25	generally about kind of like you were saying about	13:16:20

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1 meetings, about Domestic Policy Council, you can 13:16:24  
2 provide those responses of what the subject matter 13:16:27  
3 of the meetings were, but to the extent it talks 13:16:30  
4 about internal government deliberations, I would 13:16:33  
5 instruct you not to answer. 13:16:37

6 Q. I guess a yes-or-no question first. 13:16:39

7 A. You want to restate the question? 13:16:42

8 Q. Yeah. Do you -- is there anything from 13:16:43  
9 your experience or -- yeah, either direct 13:16:45  
10 experience or indirect experience, information from 13:16:50  
11 others while you were working at DHS that led you 13:16:52  
12 to believe or suspect, as stated in this report, 13:16:57  
13 that the White House Domestic Policy Council sought 13:17:04  
14 to influence the decision-making processes at the 13:17:08  
15 State Department and DHS regarding the TPS 13:17:11  
16 determinations? 13:17:14

17 MR. KIRSCHNER: Objection, calls for 13:17:14  
18 speculation. 13:17:21

19 A. Um, so this is one of those things where 13:17:21  
20 I'm really not quite sure how to answer. 13:17:23

21 MR. KIRSCHNER: To the extent that this 13:17:26  
22 calls about internal government deliberations, I 13:17:28  
23 would instruct you not to answer. And I also 13:17:31  
24 object that the question calls for speculation. 13:17:34

25 So to the extent it calls for internal 13:17:36

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1 government deliberations and your answer -- to 13:17:40  
2 provide an answer to the question asked would be 13:17:41  
3 revealing of internal government deliberations, 13:17:44  
4 then I would instruct you not to answer. 13:17:47

5 A. Okay. So I'm not going to answer based on 13:17:49  
6 that objection. 13:17:52

7 Q. Okay. Can you turn to the second to last 13:17:53  
8 page, page 4, there are two final paragraphs. If 13:18:48  
9 you could just read those, I'd appreciate it. 13:18:51

10 MR. KIRSCHNER: Page 4 or page -- oh, 13:18:55  
11 sorry. I guess page 5 is the last page, but it has 13:18:57  
12 footnotes, so you're referring to the last two 13:19:01  
13 paragraphs on page 4; is that correct? 13:19:03

14 MS. MacLEAN: Yes. 13:19:05

15 A. Okay. 13:19:29

16 Q. So the second to last paragraph starts 13:19:29  
17 with, "Under the Trump administration, DHS has 13:19:37  
18 adopted a new and strict interpretation of the 13:19:41  
19 statute governing TPS. The administration argues 13:19:43  
20 that TPS can only be renewed if conditions upon 13:19:47  
21 which the country's original designation was based 13:19:51  
22 with an assessment of whether those originating 13:19:53  
23 conditions continue to exist." 13:19:57

24 Is it your understanding from your time at 13:20:02  
25 DHS that this was the interpretation of the TPS 13:20:04

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1	statute that DHS was relying on?	13:20:07
2	MR. KIRSCHNER: Objection, calls for	13:20:14
3	speculation.	13:20:15
4	A. So it's my recollection during my time at	13:20:15
5	DHS that strict interpretation of the statute was a	13:20:18
6	point of view that was held by certain people at	13:20:23
7	DHS, yes.	13:20:28
8	Q. Who were the people that it was held by,	13:20:29
9	to your recollection?	13:20:31
10	MR. KIRSCHNER: Objection. To the extent	13:20:32
11	this calls for internal government deliberations, I	13:20:33
12	would instruct you not to answer.	13:20:37
13	Q. With whom did you have conversations about	13:20:38
14	the interpretation of the statute?	13:20:40
15	MR. KIRSCHNER: Objection, that suggests	13:20:42
16	-- kind of assuming facts not in evidence that the	13:20:44
17	conversations of who he's having conversations with	13:20:46
18	were people who had a strict interpretation. I	13:20:49
19	just want to make sure that the record is clear	13:20:51
20	that that's not how he's testified, and I just want	13:20:53
21	to call that this is -- just object to the extent	13:20:57
22	that this suggests a mischaracterization of the	13:21:02
23	testimony.	13:21:07
24	MS. MacLEAN: So to be clear, he can	13:21:07
25	answer the question of who he had conversations	13:21:09

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1 with about the statute, but you want to be clear on 13:21:11  
2 the record that the -- that he's not making any 13:21:13  
3 assertions at this stage because of deliberative 13:21:15  
4 process privilege assertions about what the content 13:21:18  
5 of those conversations were? 13:21:21

6 MR. KIRSCHNER: Yes, and what those -- and 13:21:22  
7 what those people have interpreted the statue as. 13:21:23  
8 He did not say that -- he's not speaking for the 13:21:25  
9 agency. He said some people, he didn't say all 13:21:27  
10 people at the agency, so I want to make the record 13:21:30  
11 clear that the answer that he provided did not 13:21:33  
12 suggest that that was the only interpretation 13:21:35  
13 within the agency. And also that whoever he 13:21:38  
14 identifies, it is not necessarily associated with a 13:21:42  
15 particular interpretation. 13:21:46

16 Q. So you can answer the question who -- with 13:21:47  
17 whom you had communications about the 13:21:50  
18 interpretation of the statute at DHS. 13:21:53

19 A. So -- so obviously, this issue went right 13:21:57  
20 to the heart of -- of the Secretary's decision on 13:22:06  
21 terminating or extending TPS. This issue goes 13:22:14  
22 right to the heart of whether her hands were tied 13:22:19  
23 or whether she had a certain amount of flexibility, 13:22:24  
24 it being her decision to make, right? 13:22:30

25 And so this issue did arise in 13:22:33

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1 conversations, in meetings that were held about 13:22:36  
2 TPS, and there were conversations about this issue. 13:22:39  
3 And there were people who -- within DHS who were 13:22:46  
4 strict constructionists, if I can use that phrase 13:22:52  
5 in this context, and there were other people who -- 13:22:58  
6 who had a more flexible approach to the Secretary's 13:23:00  
7 authorities in extending or redesignating TPS. 13:23:05

8 Q. So can you identify who you had 13:23:09  
9 conversations with or who -- whether you had direct 13:23:18  
10 conversations with these people or you were aware 13:23:26  
11 of conversations or, you know, in the room when 13:23:29  
12 these conversations happened regarding the 13:23:33  
13 interpretation of the TPS statute? 13:23:34

14 MR. KIRSCHNER: Again, I just want to make 13:23:36  
15 the record clear that I'm instructing Ambassador 13:23:38  
16 Nealon not to answer about what the recommendations 13:23:41  
17 or discussions were. You can answer who you had 13:23:46  
18 conversations with about the interpretation of TPS. 13:23:51

19 THE WITNESS: Okay. That's helpful. 13:23:55

20 A. So I don't recall having a conversation 13:24:00  
21 myself with anyone about this -- in other words, I 13:24:04  
22 don't recall having debate or an argument with 13:24:15  
23 anyone within DHS myself about this issue. 13:24:17

24 I do recall, as I said, this issue coming 13:24:20  
25 up, as it naturally would, in meetings that -- that 13:24:23

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1 took place where TPS was discussed. 13:24:29

2 Q. And can you say who you know to have 13:24:32  
3 participated in those conversations? 13:24:36

4 A. So, you know, I -- 13:24:39

5 MR. KIRSCHNER: Objection to the extent it 13:24:43  
6 calls for speculation. I know that the question 13:24:45  
7 said did you know, but based on his last answer, I 13:24:48  
8 just object to the extent that -- that the word 13:24:51  
9 "know" suggested a speculative answer. 13:24:54

10 A. You know, it's just very difficult to pick 13:24:57  
11 out one meeting out of literally thousands that 13:25:02  
12 I've had over the last couple of years, thousands, 13:25:06  
13 and say oh, yeah, at that meeting, these people 13:25:09  
14 were present and this person said that about -- I 13:25:12  
15 just don't have a memory that works like that. 13:25:15

16 Q. Um-hum, um-hum. 13:25:18

17 A. So what I can do is characterize it, as I 13:25:20  
18 just did for you, which is that there were -- there 13:25:23  
19 are lots of meetings at DHS, and in some of those 13:25:26  
20 meetings, TPS was discussed. And at some of those 13:25:29  
21 meetings where TPS was discussed, this issue arose 13:25:34  
22 because it's a fundamental issue because it goes 13:25:37  
23 directly to the authority and the leeway that the 13:25:39  
24 Secretary has in making a decision about TPS, so it 13:25:44  
25 was discussed. 13:25:48

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1	Now, who was -- who was at that meeting?	13:25:53
2	There was no that meeting, there were many	13:25:54
3	meetings. So who was at those meetings?	13:25:58
4	At the meetings that I was at, I was	13:26:00
5	there. At some of those, the Secretary or Acting	13:26:03
6	Secretary was there. Oftentimes, there would be	13:26:06
7	representatives of the general counsel's office	13:26:08
8	there. Most of the time, there would be one or	13:26:11
9	more of the Secretary's counsellors present, and	13:26:15
10	almost always you would have had the Secretary's	13:26:20
11	Chief of Staff and/or Deputy Chief of Staff.	13:26:23
12	Q. Thank you.	13:26:33
13	And just to identify some of these people,	13:26:34
14	when you say the Secretary or the Acting Secretary,	13:26:38
15	would you say that this conversation has come up in	13:26:39
16	context where General Kelly, Acting Secretary Duke,	13:26:42
17	and Secretary Nielsen had been present or some	13:26:47
18	combination of those three?	13:26:50
19	MR. KIRSCHNER: Objection, compound	13:26:51
20	question, calls for -- confusing, just compound	13:26:53
21	question.	13:26:58
22	A. So to give you a little bit of	13:26:58
23	perspective, which might be helpful. I overlapped	13:27:00
24	for three weeks with General Kelly, so just by	13:27:03
25	definition, I was in far, far fewer meetings with	13:27:06

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1	him than I was with Secretary Duke or Secretary	13:27:09
2	Nielsen.	13:27:12
3	I believe -- I believe Acting Secretary	13:27:13
4	Duke was the Acting Secretary for about five months	13:27:17
5	of the time that I was there, so by definition, I	13:27:21
6	had far more meetings with her than I had with	13:27:24
7	General Kelly or with Secretary Nielsen.	13:27:26
8	And I believe I overlapped with Secretary	13:27:29
9	Nielsen for about two months. I might be a little	13:27:32
10	bit off, but something like that. So again, by	13:27:35
11	definition, there were just fewer meetings with her	13:27:38
12	when -- during her time as Secretary than there	13:27:41
13	were with Acting Secretary Duke.	13:27:45
14	Q. So given that and with that context, do	13:27:49
15	you recall any of these conversations with	13:27:52
16	Secretary -- with General Kelly?	13:27:54
17	MR. KIRSCHNER: Objection, to the context	13:27:55
18	of timing, it's vague about if you're referring to	13:27:57
19	General Kelly's time as Secretary of Homeland	13:28:05
20	Security.	13:28:08
21	Q. General Kelly's time as Secretary of	13:28:08
22	Homeland Security.	13:28:11
23	A. I don't.	13:28:11
24	Q. Do you recall having these conversations	13:28:11
25	or being present in the room where Secretary Duke	13:28:13

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1 -- Acting Secretary Duke was involved in these  
2 conversations?

13:28:16

3 A. Yes.

13:28:19

4 Q. Do you recall being present when Secretary  
5 Nielsen was involved in these conversations  
6 regarding the interpretation of the TPS statute?

13:28:19

7 A. I don't.

13:28:33

8           Q. And you said some of these conversations  
9 would take place where the Secretary's counsellors  
10 were in the room. You identified previously that  
11 the Secretary's counselor who was overseeing the  
12 immigration portfolio was Mr. Hamilton.

13·28·34

13                   Are you referencing Mr. Hamilton when you  
14 speak about the Secretary's counsellors being  
15 present in the room for those conversations?

13:28:56

16 A. He is one of the counsellors that I'm  
17 referencing; there were others.

13:29:04

18 Q. Who were the other counsellors that you  
19 would be referencing?

13:29:08

20           A. So she had a number of counsellors, and  
21       they changed over the period of time that I was  
22       there. And, you know, they run their own schedules  
23       as well, so not everybody can be at every meeting.

13:29:09

24                   But Mr. Hamilton was -- was the counsellor  
25 who was most often present in meetings where TPS

13:29:20

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1	was discussed.	13:29:26
2	Q. Is it accurate that Ms. Tracy Short	13:29:28
3	succeeded Mr. Hamilton when he moved to the	13:29:32
4	Department of Justice?	13:29:35
5	A. So that's Mr. Tracy Short.	13:29:37
6	Q. Mr. Tracy Short. Sorry about that.	13:29:39
7	A. And Tracy Short did become a counsellor.	13:29:44
8	Whether he actually replaced Mr. Hamilton or not, I	13:29:49
9	don't know. But he did become a counsellor, yes.	13:29:53
10	Q. Was there someone who took over the	13:29:55
11	immigration portfolio as one of the Secretary's	13:29:58
12	counsellors after Mr. Hamilton moved from DHS to	13:30:01
13	Department of Justice?	13:30:06
14	A. You know, what the formal designation	13:30:06
15	upstairs in the Secretary's office was, I don't	13:30:08
16	recall, but I do know Mr. Short was often involved	13:30:11
17	in -- during his time there in conversations about	13:30:14
18	immigration, TPS.	13:30:17
19	Q. Okay. Was there anyone else --	13:30:18
20	MS. MacLEAN: Sorry, scratch that.	13:30:22
21	Q. Following Mr. Hamilton's tenure at DHS,	13:30:27
22	was there any other counsellor to the Secretary who	13:30:33
23	was regularly or often present in TPS-related	13:30:34
24	conversations?	13:30:38
25	A. Yes, just because the counsellors were	13:30:39

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1 often present in meetings where the Secretary was 13:30:45  
2 present. So Miles Taylor, for example, is another 13:30:48  
3 counsellor to the Secretary. He didn't cover 13:30:55  
4 immigration specifically, but he would oftentimes 13:30:57  
5 be in meetings where immigration and TPS were 13:31:00  
6 discussed. 13:31:04

7 Q. Okay. Anyone else? 13:31:04

8 A. No one else occurs to me. 13:31:06

9 Q. Okay. Great. We'll move on from that 13:31:08  
10 exhibit. 13:31:36

11 (Exhibit 35, NewsRoom article, 5/8/18 13:31:55  
12 Washington Post, marked for identification.) 13:31:56

13 Q. So we just marked Exhibit 35. It's a long 13:31:56  
14 article. I'm not going to make you read the whole 13:31:59  
15 thing right now, and you may have read this before. 13:32:01

16 But if you could turn to the middle of 13:32:05  
17 page 2, the fifth full paragraph down, which starts 13:32:10  
18 with, "According to current and former State 13:32:17  
19 Department officials." 13:32:21

20 Do you see where I'm looking? 13:32:22

21 A. Yes. 13:32:24

22 MR. KIRSCHNER: I would kind of object and 13:32:25  
23 ask that Ambassador Nealon have an opportunity to 13:32:26  
24 look at the document to the extent he feels -- 13:32:28

25 Q. Yeah. You can take a moment to look at 13:32:32

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1 the document. Just trying to give us enough time 13:32:34  
2 to cover the issues that need to be covered. I 13:32:37  
3 don't think it's necessary that you read this 13:32:39  
4 entire document. I imagine you have reviewed this 13:32:41  
5 document before. 13:32:43

6 MR. KIRSCHNER: I just want to make sure 13:32:43  
7 that when he's answering questions, that it's in 13:32:45  
8 the context of understanding what else is in the 13:32:47  
9 document. 13:32:49

10 MS. MacLEAN: Fair enough. 13:32:51

11 MR. KIRSCHNER: So I defer to Ambassador 13:32:52  
12 Nealon when he's prepared to answer questions about 13:32:54  
13 the document. 13:32:57

14 Q. I'm not going to ask you too many 13:32:58  
15 questions about this document. 13:33:00

16 A. So go ahead and ask me the questions and 13:33:01  
17 then if I need to refer back to the document, I'll 13:33:03  
18 ask your permission to do so. 13:33:05

19 Q. Of course. 13:33:06

20 So that paragraph reads, "According to 13:33:07  
21 current and former State Department officials, the 13:33:08  
22 embassy cables were received by Tillerson's aides 13:33:11  
23 but generated no reply from the Secretary or his 13:33:12  
24 staff." 13:33:15

25 Do you understand that to have been the 13:33:15



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1 answer to this question.

13:34:31

2 Q. So to the extent that you can answer based  
3 on what your attorney has advised, are you aware of  
4 whether there was any reply from the Secretary of  
5 State or his staff to the embassy cables that were  
6 received regarding TPS?

13:34:32

13:34:34

13:34:38

13:34:41

13:34:44

7 MR. KIRSCHNER: Again, objection, this is  
8 like foundational. Like, this is characterizing  
9 kind of a sentence in an article that without  
10 context I think provides a difficulty in  
11 responding, and it's a characterization of how the  
12 sentence is stated within the article.

13:34:45

13:34:47

13:34:51

13:34:55

13:35:01

13:35:04

13 Q. If you understand the question, you can  
14 answer the question.

13:35:07

13:35:11

15 A. So I'm not aware one way or the other that  
16 the -- that the cables were answered or that they  
17 were not answered.

13:35:11

13:35:13

13:35:15

18 Q. So the following sentence reads, "In the  
19 ensuing weeks, Trump Senior Advisor and Immigration  
20 Hardliner Stephen Miller placed phone calls to DHS  
21 Chief of Staff Chad Wolf and top Tillerson  
22 advisors, telling them to end TPS anyway, according  
23 to current and former administration officials who  
24 like others spoke on the condition of anonymity."

13:35:17

13:35:29

13:35:33

13:35:36

13:35:39

13:35:41

13:35:44

25 Are you aware of whether Trump Senior

13:35:47

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1	Advisor and Immigration -- well, we won't -- we	13:35:50
2	won't characterize his position, but that Trump	13:35:53
3	Senior Advisor Stephen Miller placed phone calls to	13:35:56
4	DHS Chief of Staff Chad Wolf concerning TPS?	13:36:00
5	MR. KIRSCHNER: And on this question,	13:36:05
6	Ambassador Nealon, you can answer the question as	13:36:07
7	asked about whether you're aware of any phone calls	13:36:09
8	between Stephen Miller and Chad Wolf. To the	13:36:11
9	extent the question calls for the nature of those	13:36:15
10	communications, I would instruct you not to answer.	13:36:17
11	A. So I was told that such phone calls took	13:36:21
12	place, but I didn't and don't have any firsthand	13:36:25
13	knowledge of those phone calls.	13:36:28
14	Q. Who told you that the phone calls took	13:36:35
15	place?	13:36:37
16	MR. KIRSCHNER: You can answer.	13:36:37
17	A. Chad Wolf and others.	13:36:38
18	Q. Did Mr. Wolf describe to you without --	13:36:42
19	it's a yes-or-no question -- the content of those	13:36:47
20	phone calls?	13:36:50
21	A. No, only in the broadest terms, only that	13:36:51
22	the phone calls had taken place.	13:36:56
23	Q. The second portion of that sentence reads	13:36:58
24	that Mr. Miller also communicated with top	13:37:07
25	Tillerson advisors concerning TPS.	13:37:11

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1	Are you aware of whether those	13:37:14
2	communications happened?	13:37:15
3	MR. KIRSCHNER: Again, you can answer the	13:37:17
4	yes-or-no question of whether you're aware of those	13:37:20
5	communications. To the extent that the question	13:37:23
6	elaborates on the nature of those communications, I	13:37:37
7	will instruct you not to answer, but first there	13:37:31
8	might not be a need to answer the second part of	13:37:33
9	the question.	13:37:35
10	A. I'm not aware.	13:37:35
11	Q. Okay. So you can read the next paragraph	13:37:44
12	and the following paragraph. I mean, you can read	13:37:50
13	to the end of the page, if you'd like, and I'll ask	13:37:53
14	you a question about two paragraphs down.	13:37:56
15	MR. KIRSCHNER: Sorry, just to make sure,	13:37:58
16	you're -- are you going from "The White House	13:37:59
17	official" down till -- to what paragraph?	13:38:02
18	Q. And you can read just if you want the	13:38:05
19	context, you know, a few more paragraphs. But the	13:38:07
20	main question is from the paragraph that starts	13:38:10
21	with "In the letter dated October 31st."	13:38:12
22	MR. KIRSCHNER: Okay.	13:38:14
23	A. Okay.	13:38:48
24	Q. So in the paragraph that starts with, "In	13:38:48
25	a letter dated October 31st," that paragraph reads,	13:38:50

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1	"Tillerson told Homeland Security Acting Secretary	13:38:55
2	Elaine Duke that conditions in Central America and	13:38:58
3	Haiti had improved" --	13:39:05
4	(Interruption by the reporter.)	13:39:05
5	Q. "Tillerson told Homeland Security's Acting	13:39:08
6	Secretary Elaine Duke that conditions in Central	13:39:08
7	America and Haiti had improved and that TPS	13:39:15
8	protections were no longer warranted. When the two	13:39:17
9	spoke by phone, Tillerson told Duke ending TPS 'was	13:39:20
10	just something she had to do?'"	13:39:25
11	Are you aware of any conversation like the	13:39:28
12	conversation that is described in this paragraph?	13:39:34
13	MR. KIRSCHNER: Objection. Ambassador	13:39:36
14	Nealon can answer the question if he's aware of any	13:39:40
15	conversations between Elaine Duke and Secretary	13:39:43
16	Tillerson about TPS. I instruct Ambassador Nealon	13:39:47
17	not to answer about the nature of the deliberations	13:39:51
18	between Secretary of State Tillerson and Acting	13:39:54
19	Secretary Duke.	13:39:58
20	A. Yes.	13:39:59
21	MR. KIRSCHNER: Sorry. I -- like the	13:40:00
22	record is not clear, the question of yes, I just	13:40:02
23	want to make it clear in your words what you're	13:40:06
24	referring to as yes so that we're not -- have a	13:40:09
25	lack of clarity on the record.	13:40:14

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1	THE WITNESS: Thank you.	13:40:16
2	A. Yes, I'm aware that such a conversation	13:40:17
3	took place in that I was told that such a	13:40:21
4	conversation took place. I wasn't present for it	13:40:25
5	and had no direct knowledge of it.	13:40:28
6	Q. And who communicated to you that such a	13:40:30
7	conversation took place?	13:40:32
8	A. I don't recall.	13:40:33
9	MR. KIRSCHNER: Again, I think the record	13:40:38
10	is not clear when you say "such a conversation took	13:40:39
11	place." Again, you're -- it's okay for you to	13:40:43
12	answer questions about whether Secretary of State	13:40:49
13	Tillerson and Acting Secretary Duke had	13:40:51
14	conversations about TPS.	13:40:54
15	The nature of those conversations, I	13:40:56
16	instruct you not to answer. So when you say "such	13:40:57
17	a conversation took place," I want to make sure the	13:41:00
18	record is clear what you're referring to.	13:41:02
19	A. So I was told that there was a	13:41:05
20	conversation between Secretary Tillerson and Acting	13:41:12
21	Secretary Duke regarding the TPS decision.	13:41:18
22	Q. And that conversation happened around	13:41:25
23	October 31st, 2017, in your recollection?	13:41:29
24	A. So I don't recall the date. My	13:41:39
25	recollection is that it happened at the time of the	13:41:40

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1 TPS decision.

13:41:43

2 Q. Okay. So the last full paragraph of that  
3 page reads, "White House Chief of Staff John  
4 F. Kelly, who had run DHS from January until July,  
5 called Duke from Asia where he was traveling with  
6 the President to convey his frustration."

13:41:48

13:41:55

13:42:00

13:42:04

13:42:07

7 Were you aware of whether White House  
8 Chief of Staff John Kelly called Acting Secretary  
9 Duke concerning TPS?

13:42:10

13:42:13

13:42:17

10 MR. KIRSCHNER: Again, I will instruct  
11 Ambassador Nealon that he can answer the question  
12 of whether he's aware of a phone call between  
13 General Kelly and Acting Secretary Duke.

13:42:18

13:42:21

13:42:23

13:42:26

14 To the extent the question calls for  
15 deliberations during that phone call, I would  
16 instruct Ambassador Nealon not to answer.

13:42:30

13:42:33

13:42:35

17 A. Similarly, I was told that a phone  
18 conversation took place between Chief of Staff  
19 Kelly and Acting Secretary Duke at the time of  
20 the -- of that particular TPS decision.

13:42:38

13:42:42

13:42:46

13:42:51

21 Q. And who communicated to you that there was  
22 such a phone call?

13:42:54

13:43:01

23 A. I don't recall.

13:43:02

24 Q. Do you recall whether it was one of the  
25 participants of the phone call?

13:43:03

13:43:09

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1 A. I don't recall.

13:43:11

2 Q. Okay. And the last -- sorry, not the last  
3 from this article -- if you go to the next page, in  
4 the middle of the page, there's a paragraph that  
5 starts with, "Immigration restrictionists."

13:43:13

13:43:22

13:43:26

13:43:30

6 Do you see that paragraph?

13:43:33

7 A. I do.

13:43:35

8 Q. The paragraph reads -- and I will go  
9 slower this time -- "Immigration restrictionists  
10 seeking to reduce the number of foreigners living  
11 in the United States argue the law's 'temporary'  
12 intent has been violated."

13:43:35

13:43:39

13:43:40

13:43:45

13:43:54

13 Were you aware during your time at DHS of  
14 any communication within the Department of Homeland  
15 Security concerning whether TPS was no longer  
16 temporary in nature?

13:43:56

13:44:00

13:44:04

13:44:07

17 MR. KIRSCHNER: Objection. To the extent  
18 this calls for internal government deliberations, I  
19 instruct you not to answer.

13:44:08

13:44:09

13:44:14

20 Q. Were you aware of general conversations  
21 about this matter?

13:44:18

13:44:21

22 MS. MacLEAN: He -- he can answer --

13:44:23

23 MR. KIRSCHNER: As I said before, you can  
24 answer a question of whether you are aware of  
25 whether the question of temporary came up in the

13:44:23

13:44:24

13:44:26

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1	context of TPS. What the nature of that -- those	13:44:29
2	conversations were in terms of government	13:44:33
3	deliberations, I would instruct you not to answer.	13:44:34
4	A. Yes, I was aware of such conversations.	13:44:38
5	MR. KIRSCHNER: I would -- sorry -- just	13:44:40
6	with the objection, I would ask Ambassador Nealon,	13:44:43
7	when you say "such conversations," that we've lost	13:44:46
8	kind of the thread from the question, that you kind	13:44:48
9	of define what you're referring to to make the	13:44:50
10	record clear. I think it would probably be in	13:44:52
11	everybody's interest.	13:44:55
12	THE WITNESS: Thank you.	13:44:56
13	A. So during my time at TPS, I was -- at DHS,	13:44:58
14	excuse me -- I was aware of conversations that took	13:45:02
15	place about the temporary nature of temporary	13:45:07
16	protected status.	13:45:10
17	Q. Do you recall in what context those	13:45:11
18	conversations arose?	13:45:14
19	A. Yes.	13:45:15
20	Q. What were the contexts in which those	13:45:19
21	conversations arose?	13:45:23
22	A. So, again, this is one of the things that	13:45:24
23	goes to the heart of the Secretary's decision on	13:45:30
24	TPS. It's one of the many elements that fed into	13:45:36
25	her decision-making process: What is the nature of	13:45:42

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1	temporary protected status, how long can it go on.	13:45:46
2	So yes, there were conversations about that.	13:45:53
3	Q. Were you aware of these conversations	13:45:55
4	during the tenure of General Kelly as DHS	13:46:03
5	Secretary?	13:46:07
6	A. Yes.	13:46:10
7	Q. Were you aware of those conversations	13:46:13
8	during the tenure of Secretary Duke as Acting	13:46:15
9	Secretary?	13:46:20
10	A. Yes.	13:46:20
11	Q. Were you aware of those conversations when	13:46:21
12	Secretary Nielsen -- during Secretary Nielsen's	13:46:24
13	tenure?	13:46:28
14	A. Yes. Maybe I should clarify, when we talk	13:46:29
15	about conversations, it was more like -- the way I	13:46:33
16	would describe it is one of the elements that would	13:46:37
17	go into a decision on TPS, one of the many elements	13:46:41
18	that would go into the Secretary's decision on TPS	13:46:47
19	is the nature of TPS.	13:46:51
20	Q. Are you -- was the -- was the Secretary --	13:46:53
21	were any of the DHS secretaries who were	13:47:08
22	secretaries during your tenure seeking guidance	13:47:10
23	concerning that question about whether temporary	13:47:14
24	protected status needed to be temporally limited?	13:47:21
25	MR. KIRSCHNER: I would instruct	13:47:26

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1 Ambassador Nealon that you can provide an answer of 13:47:30  
2 whether the -- any of the secretaries sought 13:47:33  
3 guidance, but the nature of that guidance, I would 13:47:38  
4 instruct you not to answer as deliberative process. 13:47:42  
5 And to the extent that you're aware that the 13:47:45  
6 guidance came from attorney-client communications, 13:47:47  
7 I would also instruct you not to answer on the 13:47:50  
8 attorney-client grounds, to the extent you 13:47:57  
9 differentiate in that manner. So you can provide 13:48:02  
10 an answer as to whether guidance was sought on this 13:48:05  
11 question. 13:48:08

12 A. So I don't actually know if any of the 13:48:08  
13 three secretaries asked their office of legal 13:48:11  
14 counsel to provide them with a legal document which 13:48:14  
15 would explain the temporary or the temporal nature 13:48:16  
16 of TPS. I don't know. 13:48:20

17 What I do know is that this is something 13:48:24  
18 that was on the minds of those of us in DHS who 13:48:26  
19 were dealing with TPS, what does temporary 13:48:33  
20 protected status mean. 13:48:38

21 Q. So aside -- it sounds like, if I 13:48:39  
22 understand correctly, it's not clear whether the 13:48:43  
23 Office of General Counsel weighed in on this 13:48:46  
24 question or was asked to weigh in on this question, 13:48:48  
25 but the question was being considered within DHS; 13:48:50

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1	is that correct?	13:48:54
2	A. Yeah, it sounds like I'm being	13:48:54
3	obstructionist or something, and I'm really not	13:49:00
4	trying to. It's -- it seems as though you're	13:49:02
5	asking me to recall specific conversations when --	13:49:08
6	and I just -- I just can't.	13:49:10
7	So what I do know, what I do recall is	13:49:11
8	that this is one of the many things that was on the	13:49:15
9	minds of those of us who had to advise the	13:49:18
10	Secretary about TPS, along with the strict	13:49:21
11	constructionist issue, there was also this temporal	13:49:26
12	issue, and then there were of course the policy	13:49:32
13	implications.	13:49:34
14	Q. What were the policy implications that	13:49:35
15	you're referencing?	13:49:37
16	A. So the ones I'm referencing are foreign	13:49:43
17	policy considerations.	13:49:46
18	Q. Were there other policy implications that	13:49:47
19	others were referencing?	13:49:50
20	MR. KIRSCHNER: Again, I instruct	13:49:52
21	Ambassador Nealon to the extent this is getting	13:49:54
22	into questions about internal government	13:49:57
23	deliberations, about recommendations or	13:50:00
24	deliberations about decisions in anticipation of	13:50:05
25	decisions being made, I instruct you not to answer.	13:50:10

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1	To the extent you can provide a general	13:50:12
2	answer, you can provide a general response in terms	13:50:15
3	of kind of what you view kind of were the major	13:50:17
4	kind of questions to be addressed in your mind.	13:50:21
5	A. Sorry. Would you restate?	13:50:26
6	Q. Yes. You said, you know, amongst the	13:50:28
7	issues that were being considered by the Secretary	13:50:30
8	or DHS entities that were involved in advising the	13:50:32
9	Secretary regarding TPS were questions around the	13:50:36
10	temporal nature of TPS, the -- the question of	13:50:39
11	whether the TPS statute should be interpreted in a	13:50:43
12	strictly constructionist way, or more broadly, and	13:50:48
13	policy implications.	13:50:51
14	And so I asked what are the policy	13:50:52
15	implications. And you identified for yourself some	13:50:54
16	of those policy implications would be foreign	13:50:59
17	policy considerations. And so I asked were there	13:51:01
18	other policy considerations that you know that were	13:51:05
19	considered by others within DHS.	13:51:07
20	A. Yes.	13:51:10
21	Q. I would imagine beyond that in terms of	13:51:10
22	the content of those conversations, you, and your	13:51:18
23	counsel in particular, would identify that you	13:51:21
24	can't answer in more detail because of deliberative	13:51:23
25	process privilege assertions.	13:51:26

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1	MS. MacLEAN: Is that correct?	13:51:28
2	MR. KIRSCHNER: Correct. I mean, I'll	13:51:34
3	instruct you not to answer under deliberative	13:51:34
4	process, kind of the internal deliberations of --	13:51:34
5	in anticipation of a decision being made, besides	13:51:37
6	the general kind of context of what kind of were	13:51:40
7	considered, of what factored into a decision.	13:51:44
8	Q. Let me see if I can clarify in a way that	13:51:47
9	doesn't raise deliberative process privilege	13:51:50
10	concerns.	13:51:53
11	Were any of these policy considerations	13:51:53
12	discussed after a decision had been made?	13:51:55
13	A. You know, I -- I don't recall -- I don't	13:52:03
14	recall such discussions after decisions were made,	13:52:09
15	no.	13:52:12
16	Q. Okay. Let's turn to page --	13:52:12
17	MR. KIRSCHNER: I just want to make clear	13:52:18
18	that he -- that Ambassador Nealon can discuss	13:52:20
19	generally what factors played into a decision. I	13:52:22
20	don't want to suggest that I'm shutting down one	13:52:24
21	line of questioning on this. I mean, Ambassador	13:52:28
22	Nealon has responded. And so I don't want to give	13:52:30
23	the misimpression there.	13:52:32
24	What those internal deliberations were,	13:52:33
25	who was making recommendations along those lines,	13:52:36

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1 that I would instruct you not to answer on all  
2 these factors, but in terms of general factors, you  
3 can provide a general overview of what factors went  
4 into a decision for TPS.

13:52:38

5 THE WITNESS: Thank you. That's helpful.

13:52:49

6 So maybe I can clarify a little bit.

13:52:51

7 A. So, you know, whenever someone like the  
8 Secretary of Homeland Security is faced with a  
9 consequential policy decision like TPS, there are a  
10 number of factors that have to be taken into  
11 account.

13:52:53

13:52:55

13:52:59

13:53:02

13:53:04

12 And in the case of TPS, we've talked about  
13 a couple of them. One was the legal nature of TPS,  
14 whether you interpret the statute strictly or more  
15 -- in a more flexible way.

13:53:05

13:53:07

13:53:12

13:53:16

16 The other is the temporal nature of TPS,  
17 what does temporary protected status mean after  
18 20 years, for example.

13:53:18

13:53:21

13:53:26

19 Then there are policy considerations, what  
20 are the foreign policy consequences for the United  
21 States of extending or terminating TPS. And then  
22 finally, what are the domestic policy  
23 considerations of either terminating or extending  
24 TPS. So those are the kind of things that any of  
25 the secretaries would have taken into account when

13:53:29

13:53:32

13:53:36

13:53:43

13:53:45

13:53:49

13:53:53

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1   contemplating a decision.

13:53:56

2 Q. And when you referenced domestic policy  
3 considerations, what are you referencing?

13:53:57

4           A. Well, domestic politics, administration  
5        policy.

13:54:03

6 O. And what would you consider to be

13:54:08

7 administration policy as it applies to TPS?

13:54:10

8                   MR. KIRSCHNER: Objection, calls for  
9 speculation

13·54·13

10       A. Yeah, I mean, I really refer you to the  
11 White House, to the president and his public  
12 statements on what -- on what administration policy  
13 is.

13:54:19

14 Q. Okay. If we can just go to page 4, the  
15 fourth full paragraph up, which is actually one  
16 sentence which starts with "the White House never  
17 got on board with the Senate proposal." You can  
18 maybe read from above "where negotiations break  
19 down" so you have the context.

13:54:30

20 A. Okay.

13:55:35

21 Q. So the paragraph that starts with "the  
22 White House never got on board with the Senate  
23 proposal" includes reference to a meeting that was  
24 much publicized in which President Trump reportedly  
25 made a comment referring to certain immigrants as

13:55:35

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1	people from, in shorthand, S-hole countries, in the	13:55:53
2	Oval Office.	13:55:57
3	Are you aware of those public accounts of	13:55:58
4	the meeting?	13:56:01
5	A. I'm aware of the public accounts of that	13:56:02
6	meeting.	13:56:04
7	Q. Did you have any internal conversations	13:56:04
8	within DHS about such a meeting?	13:56:08
9	MR. KIRSCHNER: Objection, characterizing	13:56:10
10	the article, putting facts -- the testimony that	13:56:12
11	counsel was testifying about the article.	13:56:17
12	Ambassador Nealon, I would ask for -- ask	13:56:20
13	Ambassador Nealon to be able to use his own	13:56:25
14	language in responding to the question. I also	13:56:28
15	would say that the question is calling for	13:56:30
16	speculation about what was discussed at the	13:56:33
17	meeting. I object on speculative grounds.	13:56:35
18	Q. You can answer the question, were you	13:56:38
19	aware of conversations about the meeting that was	13:56:40
20	described in this paragraph, did you have such --	13:56:42
21	did you have conversations about such a meeting	13:56:47
22	internally within DHS?	13:56:50
23	A. You know, I don't recall -- I don't recall	13:56:58
24	conversations about the meeting. I certainly	13:57:04
25	recall commentary about the alleged phrase that you	13:57:08

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1 referenced.

13:57:16

2 Q. And was it your understanding from the  
3 conversations that happened internally, aside from  
4 the public accounts, that this communication from  
5 the President or purported to be from the President  
6 was related to TPS in some way?

13:57:17

13:57:22

13:57:25

13:57:33

13:57:35

7 MR. KIRSCHNER: Objection, calls for  
8 speculation.

13:57:37

13:57:39

9 A. Yeah, I don't have any inside information  
10 about that.

13:57:41

13:57:43

11 Q. Okay. We'll move away from this exhibit.  
12 Thank you.

13:57:44

13:57:49

13 MR. KIRSCHNER: Just so you know, it's  
14 close to 2:00, just on timing.

13:58:22

13:58:24

15 MS. MacLEAN: Thank you.

13:58:26

16 Q. This is already marked as Exhibit 14 from  
17 a previous deposition.

13:58:26

13:58:28

18 So I'll just direct you to the bottom  
19 e-mail from March 22nd, 2017 at 11:32 a.m. with  
20 awareness that this was before your time at DHS. I  
21 just have one brief question here, I think, about  
22 the first paragraph of that e-mail. So let me know  
23 when you have reviewed it.

13:58:41

13:58:43

13:58:52

13:59:07

13:59:10

13:59:13

24 A. Okay.

13:59:19

25 Okay.

13:59:33

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1 Q. Is it your understanding from either your 13:59:34  
2 experience as Ambassador or in foreign embassies as 13:59:37  
3 an Ambassador to Honduras or in your time at DHS 13:59:48  
4 that the Department of State would revise their 13:59:54  
5 recommendation concerning TPS given the change in 14:00:00  
6 administration? 14:00:05

7 MR. KIRSCHNER: Objection, lack of 14:00:05  
8 foundation, speculative. 14:00:07

9 A. Um, so I don't -- honest answer is, I 14:00:08  
10 don't know. Obviously, it's the prerogative of a 14:00:20  
11 new administration to change policies as they see 14:00:23  
12 fit. I don't -- I don't have any history with TPS 14:00:26  
13 to know whether it would be a normal thing for a 14:00:30  
14 new administration to change a TPS recommendation 14:00:34  
15 or not. 14:00:39

16 Q. Would country conditions change in a new 14:00:40  
17 administration? 14:00:45

18 MR. KIRSCHNER: Objection, foundation, 14:00:46  
19 speculative. 14:00:48

20 A. Um, I suppose country conditions could 14:00:49  
21 have changed from the time the original paper was 14:00:52  
22 written until the time the new paper was written, 14:00:56  
23 but, you know, I don't know. 14:00:59

24 Q. From your previous answer, though, it 14:01:01  
25 sounds -- I don't want to put words in your mouth, 14:01:03

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1 so correct me if I'm misinterpreting you, but the 14:01:06  
2 reason for request in the change would have to do 14:01:11  
3 with questions of policy change rather than country 14:01:13  
4 conditions changed primarily? 14:01:15

5 MR. KIRSCHNER: Objection, 14:01:18  
6 mischaracterizes testimony and calls for 14:01:18  
7 speculation. 14:01:27

8 A. I think there might also be a more 14:01:27  
9 legalistic argument to be made that if you're using 14:01:34  
10 as one of your bases for a policy decision a 14:01:39  
11 recommendation from people who are no longer in 14:01:40  
12 government, that might -- that could conceivably 14:01:42  
13 pose a problem and you might want to have the paper 14:01:48  
14 redone under the signature of the current Secretary 14:01:50  
15 of State, that wouldn't strike me as an unusual 14:01:54  
16 thing to do. But again, I don't think I can be 14:01:56  
17 particularly helpful with you on this. 14:01:59

18 Q. Are you aware that Secretary Tillerson 14:02:25  
19 provided a recommendation concerning TPS for El 14:02:30  
20 Salvador, Haiti, Honduras, and Nicaragua? 14:02:35

21 A. Yes. 14:02:40

22 Q. Did you communicate with anyone at the 14:02:40  
23 State Department besides the communications that 14:02:42  
24 you've already discussed during this deposition 14:02:44  
25 about their recommendation for these countries? 14:02:47

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1	A. No. I think we've already talked	14:02:51
2	extensively about my communications with the State	14:02:53
3	Department.	14:02:56
4	Q. Are you aware of what the content was of	14:02:56
5	the recommendation for these four countries from	14:02:59
6	the State Department?	14:03:01
7	MR. KIRSCHNER: So on this one, you can	14:03:02
8	answer questions about Secretary Tillerson's	14:03:06
9	recommendation or Deputy Secretary of State	14:03:10
10	Sullivan's recommendation for Sudan. To the extent	14:03:15
11	these questions go beyond that on the issues that	14:03:21
12	we previously objected to about the internal	14:03:26
13	deliberations within the State Department that you	14:03:29
14	are aware of, I instruct you not to answer. I	14:03:31
15	understood the question as referring to the actual	14:03:33
16	formal recommendation from Secretary of State	14:03:35
17	Tillerson and Deputy Secretary of State Sullivan,	14:03:38
18	but I just want to make sure that you're aware of	14:03:41
19	where I'm instructing you not to answer.	14:03:43
20	THE WITNESS: Okay. Thank you.	14:03:47
21	A. Sorry, just restate.	14:03:48
22	Q. Yes. Are you aware of what Secretary of	14:03:50
23	State Tillerson ultimately recommended regarding	14:03:54
24	the TPS for these four countries?	14:03:57
25	A. Yes.	14:03:58

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1	Q. Are you aware of whether there were	14:03:58
2	dissenting views in the State Department --	14:04:00
3	MR. KIRSCHNER: Objection.	14:04:02
4	Q. Well, let me go back.	14:04:03
5	What was the recommendation, to your	14:04:05
6	recollection?	14:04:08
7	MR. KIRSCHNER: I would ask for him to not	14:04:09
8	have to guess what the recommendation is --	14:04:10
9	Q. Are you aware that the recommendation was	14:04:10
10	for a termination of TPS?	14:04:12
11	A. Yes.	14:04:13
12	Q. Are you aware of whether there were	14:04:14
13	dissenting views within the State Department?	14:04:17
14	MR. KIRSCHNER: Objection. To the extent	14:04:18
15	this question calls for internal governmental	14:04:20
16	deliberations within the State Department,	14:04:23
17	including recommendations for or against what	14:04:25
18	Secretary of State Tillerson ultimately	14:04:27
19	recommended, I would instruct you not to answer.	14:04:30
20	Q. So are you aware of whether there were	14:04:35
21	dissenting views at the State Department?	14:04:38
22	MR. KIRSCHNER: Again, I instruct. That	14:04:39
23	questions calls for -- an answer to that question	14:04:41
24	would be suggestive of the entire governmental	14:04:44
25	deliberations.	14:04:46

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1	MS. MacLEAN: So are you instructing he	14:04:47
2	cannot answer that question as a yes-or-no question	14:04:50
3	even?	14:04:51
4	MR. KIRSCHNER: He can -- he can answer	14:04:51
5	the question of whether he knows whether there are	14:04:53
6	or not dissenting views, but whether -- I just want	14:04:56
7	to make it clear, I don't want a yes answer to	14:05:01
8	suggest that there are dissenting views or there	14:05:05
9	are not dissenting views. I just want to know --	14:05:07
10	he can answer the question of whether he's aware of	14:05:09
11	internal -- how about -- can we -- not to suggest a	14:05:11
12	question, but can you -- I would suggest if the	14:05:15
13	question is are you aware of internal deliberations	14:05:17
14	within the State Department about what the	14:05:19
15	recommendation would be, he can answer.	14:05:21
16	MS. MacLEAN: I can -- I have the caveat	14:05:23
17	that --	14:05:23
18	Q. This is a question about whether you have	14:05:25
19	direct knowledge about this question without the	14:05:27
20	presumption to be on the record at this stage of	14:05:30
21	whether there were dissenting views. So this is a	14:05:33
22	question about whether you have knowledge about	14:05:38
23	whether there were dissenting views at the State	14:05:39
24	Department concerning the recommendation -- about	14:05:42
25	the TPS determination for those four countries?	14:05:49

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1	A. Yes.	14:05:57
2	Q. And I understand your counsel is	14:05:57
3	instructing you based on the deliberative process	14:05:59
4	privilege not to provide any further information on	14:05:59
5	that question at this stage.	14:06:01
6	MR. KIRSCHNER: And I think the record is	14:06:01
7	clear, but I just want to make sure that the record	14:06:02
8	is clear that Ambassador Nealon's answer did not	14:06:04
9	suggest one way or the other whether there were	14:06:06
10	dissenting views or not.	14:06:08
11	Q. In your experience or to your knowledge,	14:06:10
12	either from your time as Ambassador to Honduras or	14:06:15
13	from your time at DHS, does the State Department	14:06:21
14	typically do a country by country analysis in its	14:06:26
15	TPS determinations?	14:06:29
16	MR. KIRSCHNER: Objection, calls for	14:06:33
17	speculation, lack of foundation.	14:06:36
18	A. So my understanding, perhaps imperfect, is	14:06:38
19	that there's a letter from the Secretary or the	14:06:43
20	Deputy Secretary, and then there are country	14:06:49
21	condition papers for each of the affected	14:06:53
22	countries.	14:06:57
23	Q. Do you have any knowledge as to why the	14:06:58
24	Secretary of State in this instance provided one	14:07:04
25	single recommendation concerning TPS for these four	14:07:07

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1	countries?	14:07:11
2	A. No.	14:07:12
3	MR. KIRSCHNER: I just -- could we read	14:07:20
4	back that question. I'm a little con -- wondering	14:07:24
5	if that question was confusing. I don't know. I	14:07:28
6	just want to make sure that the record is clear	14:07:31
7	that Ambassador Nealon understood the question	14:07:33
8	correctly.	14:07:34
9	THE WITNESS: And I may be confused.	14:07:35
10	Should I let her restate or --	14:07:39
11	MS. MacLEAN: Do you want to read back the	14:07:41
12	question actually if you're able?	14:07:43
13	(Whereupon, the record was read as	14:07:57
14	follows: Question: "Do you have any knowledge as	14:07:01
15	to why the Secretary of State in this instance	14:07:02
16	provided one single recommendation concerning TPS	14:07:06
17	for these four countries?" )	14:07:10
18	MR. KIRSCHNER: And I object as vague what	14:07:59
19	counsel was referring to by "these four countries."	14:08:04
20	MS. MacLEAN: We were just speaking about	14:08:07
21	Honduras, Nicaragua, Haiti, and El Salvador, so	14:08:09
22	those are the four countries that are referenced in	14:08:15
23	that question.	14:08:17
24	A. Yes. And what's --	14:08:18
25	Q. The question is, do you have any knowledge	14:08:20

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1 as to why those four countries were grouped 14:08:22  
2 together in the recommendation from Secretary of 14:08:25  
3 State Tillerson to terminate TPS? 14:08:28

4 A. No. But there was discussion, certainly 14:08:36  
5 within DHS and discussion with the State 14:08:44  
6 Department, of the importance of bundling, if you 14:08:47  
7 will, at the very least Honduras and El Salvador so 14:08:53  
8 that there was the appearance of treating them 14:08:58  
9 equally and fairly, because not to do so would 14:09:02  
10 have -- could have important policy consequences 14:09:07  
11 for the United States. 14:09:13

12 Q. What kinds of policy consequences are you 14:09:14  
13 referring to here? 14:09:18

14 A. So the United States has a regional 14:09:19  
15 approach to the Northern Triangle countries of 14:09:21  
16 Central America and so to -- and it's very 14:09:26  
17 important for policy reasons that we be seen to 14:09:29  
18 have a regional approach. And so to treat them as 14:09:32  
19 one-offs and perhaps to treat them very differently 14:09:39  
20 could have serious policy repercussions for the 14:09:43  
21 United States. 14:09:46

22 Q. And do you have any understanding as to 14:09:47  
23 why Nicaragua and Haiti would be included in that 14:09:49  
24 recommendation? 14:09:54

25 A. I don't. 14:09:54

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1	Q. Okay.	14:09:55
2	A. I'd like to clarify that answer.	14:10:13
3	Q. Yes, please.	14:10:15
4	A. I don't, but it would make sense and it	14:10:17
5	would be logical to me to group four countries in	14:10:20
6	the hemisphere together and get on the Secretary's	14:10:24
7	schedule and get on the Secretary of State's radar	14:10:29
8	screen one time rather than have to come at him	14:10:33
9	four times for four separate decisions. It might	14:10:36
10	just have made sense from a time management and	14:10:39
11	policy perspective to do it that way, but that's	14:10:42
12	speculation.	14:10:45
13	Q. Do you know if that had ever happened	14:10:45
14	before?	14:10:47
15	A. I don't know.	14:10:48
16	(Exhibit 36, E-mail dated Saturday, July 8,	14:10:49
17	2017 from Kovarik, Subject Letter to Secretary of	14:10:49
18	State about TPS, marked for identification.)	14:10:51
19	Q. I've marked this as Exhibit 36.	14:10:51
20	A. Okay.	14:11:44
21	Q. This is right around the time that you	14:11:44
22	started. Do you know if this is before or after	14:11:47
23	you started at DHS?	14:11:50
24	A. It's just before. I believe I started on	14:11:51
25	the 10th or 11th.	14:11:54

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1 Q. Okay. Were you aware of this  
2 communication?

14:11:55  
14:11:58

3 A. I don't recall this communication, but I  
4 may have seen it.

14:11:58  
14:12:01

5 MR. KIRSCHNER: Objection, vague about  
6 what is meant by "this communication."

14:12:02  
14:12:04

7 Q. So there's a sentence towards the bottom  
8 of the middle paragraph that reads, "To avoid  
9 sending a separate written request for each  
10 country, we have drafted a single letter making an  
11 overarching request for State's recommendations and  
12 laying out the upcoming TPS review schedule."

14:12:07  
14:12:19  
14:12:21  
14:12:23  
14:12:26  
14:12:29

13 Do you see that?

14:12:32

14 A. I do.

14:12:33

15 Q. That sentence is in bold.

14:12:33

16 What does this suggest to you?

14:12:40

17 MR. KIRSCHNER: Objection, calls for  
18 speculation.

14:12:42  
14:12:45

19 A. I think this refers back to my previous  
20 answer, that to me, it makes a certain amount of  
21 sense to try to get on to a very busy Secretary of  
22 State's schedule and radar screen one time rather  
23 than four separate times about similar issues. So  
24 it may be as simple as that. But beyond that, I  
25 couldn't speculate.

14:12:45  
14:12:49  
14:12:54  
14:12:58  
14:13:01  
14:13:05  
14:13:08

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1 Q. Does it appear that the recommendation for  
2 bundling TPS requests came from USCIS? 14:13:09  
14:13:12

3 MR. KIRSCHNER: Objection, calls for 14:13:12  
4 speculation. 14:13:25

5 Q. From this e-mail, which I realize was just 14:13:25  
6 before the time that you started, does it appear 14:13:27  
7 that the request for joining the Department of 14:13:31  
8 State's review of countries was at the request of 14:13:34  
9 USCIS? 14:13:40

10 MR. KIRSCHNER: Objection, calls for 14:13:41  
11 speculation. 14:13:46

12 A. It looks like the intent of the letter is 14:13:46  
13 to suggest to the State Department that they bundle 14:13:48  
14 the TPS recommendations rather than treat them as 14:13:56  
15 separate requests. 14:14:02

16 MS. MacLEAN: Can you get 9? 14:14:36

17 (Exhibit 37, DHS-001-659-000607 - 609, 14:14:41  
18 marked for identification.) 14:14:43

19 Q. So this is Exhibit 37. I think many of 14:14:46  
20 the questions that I would have asked about this 14:15:14  
21 document you've already covered. So I just -- I 14:15:16  
22 think maybe one or two questions once you've had a 14:15:20  
23 chance to review. 14:15:24

24 A. Okay. 14:15:49

25 Q. So if you look at the e-mail that is at 14:15:49

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1	the top of the first page, page 1 of 3, from	14:15:52
2	Ms. Petyo to you, Ms. Petyo says, "They told us we	14:15:57
3	wouldn't get -- we wouldn't get us a package until	14:16:01
4	Friday after promising Chad one today."	14:16:07
5	Would you understand what "a package"	14:16:10
6	referenced in this context or referred to in this	14:16:12
7	context?	14:16:15
8	MR. KIRSCHNER: Objection, foundation,	14:16:15
9	speculative.	14:16:18
10	A. I'm guessing, just because I don't recall	14:16:18
11	the dates off the top of my head, this appears to	14:16:23
12	be the State Department's TPS recommendation to the	14:16:26
13	Secretary.	14:16:35
14	Q. I think the other issues you actually	14:16:36
15	covered already, so I will leave it at that.	14:17:03
16	So you had referenced previously that the	14:17:22
17	main point of contact that you had at the White	14:17:24
18	House concerning TPS was a gentleman in the	14:17:27
19	National Security Council, whose name I'm not	14:17:30
20	recalling. Can you remind me his name?	14:17:33
21	MR. KIRSCHNER: Objection to the extent	14:17:36
22	that mischaracterizes Ambassador Nealon's	14:17:37
23	testimony. You referred to the main contact. I	14:17:40
24	just would like Ambassador Nealon to speak in his	14:17:43
25	own words.	14:17:46

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1	Q. Is it correct that your main contact in	14:17:49
2	the White House concerning TPS issues was	14:17:51
3	Mr. Tomasulo?	14:17:55
4	A. So I was in touch with Gary Tomasulo on	14:17:56
5	matters relating to TPS, but mostly in terms of	14:18:01
6	logistics, rollouts, timelines and that sort of	14:18:08
7	thing, yeah.	14:18:11
8	Q. Okay. Were you aware of whether --	14:18:15
9	MS. MacLEAN: Actually, we'll come back to	14:18:37
10	this.	14:18:39
11	Give me 52, please.	14:18:45
12	(Exhibit 38, AR-HAITI-00000001 - 3, marked	14:18:51
13	for identification.)	14:19:12
14	A. Should I read?	14:19:12
15	Q. Yeah. I think -- I don't know if you need	14:19:13
16	to read the whole paragraph, but if you can skim	14:19:16
17	the e-mail on the first page and read the e-mail on	14:19:19
18	the second page, that would be great. And I don't	14:19:23
19	have too many questions on this.	14:19:35
20	A. Okay.	14:20:18
21	Q. So the e-mail on the second page from Rear	14:20:19
22	Admiral Jones to Major General Norman copies you.	14:20:23
23	Do you remember the context of this	14:20:30
24	e-mail?	14:20:33
25	A. Yes, I do. So I recall that Acting	14:20:36

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1 Secretary Duke met with Admiral Tidd, who at that 14:20:51  
2 time was the Commander of U.S. Southern Command 14:20:55  
3 which oversees U.S. military cooperation with Haiti 14:21:00  
4 and they talked about a lot of things. But she had 14:21:06  
5 also asked -- she, Acting Secretary Duke, had also 14:21:09  
6 asked Admiral Tidd about TPS. And so this exchange 14:21:14  
7 looks like a follow-up from that meeting where 14:21:24  
8 Admiral Jones, who was the Secretary's military 14:21:28  
9 advisor, he's a Coast Guard admiral, reached out to 14:21:32  
10 the staff at U.S. Southern Command and asked for 14:21:38  
11 some more granular input, which is what this 14:21:43  
12 message from Major General Norman looks to be. 14:21:47

13 Q. Were you aware of whether the Department 14:21:53  
14 of Defense in any capacity, SouthCom or another 14:21:56  
15 component of the Department of Defense provided 14:21:59  
16 input into TPS determinations beyond Haiti? 14:22:02

17 MR. KIRSCHNER: Objection. It's asking 14:22:11  
18 Ambassador Nealon to kind of guess without context. 14:22:14  
19 I just want to make sure that there's proper 14:22:16  
20 foundation for the question. 14:22:19

21 Q. Were you aware of whether the Department 14:22:21  
22 of Defense was engaged in any other conversations 14:22:26  
23 about TPS determinations during your tenure there 14:22:29  
24 besides specific communications regarding the TPS 14:22:32  
25 determination for Haiti? 14:22:38

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1	A. I don't recall any.	14:22:40
2	Q. Okay. This is already marked from a	14:22:41
3	previous deposition as Exhibit 6.	14:23:31
4	A. I don't see my response.	14:24:04
5	Q. Yeah, we don't have your response either,	14:24:05
6	I think.	14:24:09
7	MR. KIRSCHNER: Objection, that's a	14:24:10
8	mischaracterization of this.	14:24:12
9	MS. MacLEAN: Let's leave that aside.	14:24:14
10	MR. KIRSCHNER: I just wanted -- there's	14:24:15
11	-- the document on its face does not make clear	14:24:19
12	whether there was a redaction or not. There's a	14:24:22
13	forward, it doesn't mean that there was a response.	14:24:25
14	MS. MacLEAN: There may not have been a	14:24:28
15	response. It's possible there was not a response.	14:24:29
16	MR. KIRSCHNER: Didn't want to have the	14:24:31
17	record mischaracterized.	14:24:33
18	Q. So the e-mail that is outlined or that	14:24:37
19	starts from Ms. Neubel Kovarik to you,	14:24:40
20	Mr. Dougherty and Mr. Culver, copying Mr. Hamilton	14:24:46
21	has as its subject "TPS interagency consultations."	14:24:52
22	Do you recall the context of this	14:24:52
23	communication?	14:24:56
24	MR. KIRSCHNER: Objection, foundation.	14:24:57
25	A. I don't.	14:25:01

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1	Q. Who is Mr. Culver?	14:25:02
2	A. Jared Culver is someone who works in the	14:25:09
3	borders, immigration, and trade assistant	14:25:19
4	secretaryship of the Office of Policy.	14:25:22
5	Q. Okay. The second page of the e-mail at	14:25:24
6	the top asks for you to gather input from federal	14:25:32
7	partners including State, DOD, Justice, DPC, and	14:25:45
8	NSC. First of all, what does "DOD" refer to here?	14:25:53
9	A. That would be the Department of Defense.	14:25:57
10	Q. What does "DPC" refer to here?	14:26:00
11	A. That would be the Domestic Policy Counsel.	14:26:02
12	Q. And what does "NSC" refer to here?	14:26:02
13	A. That would be the National Security	14:26:02
14	Counsel.	14:26:07
15	Q. Do you understand this mail is related to	14:26:07
16	TPS?	14:26:09
17	A. I do.	14:26:10
18	Q. Do you recall setting up a meeting with	14:26:10
19	the federal partners that are outlined here?	14:26:15
20	A. I don't. It doesn't mean I didn't, but I	14:26:19
21	don't recall.	14:26:26
22	Q. Understood.	14:26:26
23	Do you recall being asked to set up such a	14:26:27
24	meeting?	14:26:30
25	A. I don't.	14:26:30

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1 Q. Do you recall any interest in -- from the  
2 Department of Homeland Security in the position of  
3 the Domestic Policy Council with regard to TPS?

14:26:30  
14:26:55  
14:26:57

4 A. Yes.

14:27:03

5 Q. In what context?

14:27:04

6 MR. KIRSCHNER: Objection to the extent  
7 this is calling for internal government  
8 deliberations. I instruct you not to answer. If  
9 you have a general answer, you can provide it, but  
10 if it gets into the internal deliberations, I would  
11 instruct you not to answer.

14:27:06  
14:27:08  
14:27:10  
14:27:13  
14:27:16  
14:27:18

12 THE WITNESS: So, thank you.

14:27:25

13 A. So obviously, the Domestic Policy Council  
14 has a very large stake in all decisions related to  
15 immigration, including TPS decisions. So the  
16 answer is yes, there was keen interest in the  
17 Domestic Policy Council on TPS.

14:27:27  
14:27:36  
14:27:40  
14:27:46  
14:27:48

18 Q. And I misspoke, because actually we do  
19 have further communications on this.

14:27:50  
14:27:55

20 A. Okay.

14:27:57

21 MS. MacLEAN: Can you pull the next one,  
22 actually?

14:28:07  
14:28:09

23 (Exhibit 39, DHS-001-659-000689 - 691,  
24 marked for identification.)

14:28:20  
14:28:25

25 Q. I didn't realize this was in the same

14:28:28

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1	chain.	14:28:31
2	A. Thank you.	14:28:31
3	MR. KIRSCHNER: Is this -- is this	14:28:57
4	exhibit --	14:28:59
5	MS. FISHFELD: 39.	14:29:03
6	MS. MacLEAN: 39, yeah.	14:29:06
7	MR. KIRSCHNER: I don't want to go off	14:29:10
8	your line of questioning, but it's 2:30.	14:29:13
9	MS. MacLEAN: I think the idea is that we	14:29:17
10	finish at 2:50 for you to have your phone call; is	14:29:19
11	that correct?	14:29:23
12	THE WITNESS: If that's okay.	14:29:23
13	MR. KIRSCHNER: Don't want to break up --	14:29:25
14	MS. MacLEAN: No, that's okay.	14:29:27
15	Q. So this may make it clear as to why you	14:29:28
16	didn't recall.	14:29:31
17	A. I was in Australia.	14:29:32
18	Q. Yes.	14:29:34
19	So if you --	14:29:43
20	A. Sorry, I'm just going to finish reading.	14:29:44
21	Q. Please.	14:29:47
22	A. Okay.	14:30:03
23	Q. I won't ask you about the first e-mail.	14:30:03
24	A. That's actually the last e-mail.	14:30:06
25	Q. The last e-mail, yes. Maybe I will.	14:30:08

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1	So if we turn to the e-mail from	14:30:11
2	Mr. Dougherty on October 24 at 9:31 p.m. on the	14:30:24
3	bottom of page 2, Mr. Dougherty identifies that you	14:30:28
4	are on overseas travel, but that he and Jared --	14:30:34
5	which is Mr. Culver from the previous exchange, I	14:30:39
6	believe; is that correct?	14:30:44
7	A. Yes.	14:30:44
8	Q. -- can work to set this up.	14:30:45
9	Mr. Hamilton, two e-mails up, says, "This	14:30:50
10	needs to happen in the next day or two in all	14:30:54
11	likelihood."	14:30:57
12	Do you have any understanding why there	14:30:58
13	was urgency to set up that meeting?	14:31:01
14	MR. KIRSCHNER: Objection, calls for	14:31:03
15	speculation.	14:31:04
16	A. So again, I would have to look at the	14:31:04
17	timelines, but I believe this is being driven by	14:31:07
18	the need for the Secretary to make a TPS decision	14:31:10
19	very soon.	14:31:14
20	Q. Okay. And then in the e-mail that	14:31:15
21	followed that, you say that you're in Australia.	14:31:22
22	You'd like to participate if this happens, is this	14:31:31
23	AS1's initiative or USCIS's initiative.	14:31:31
24	Who do you understand "AS1" to be here?	14:31:35
25	A. AS1 is Acting Secretary Duke.	14:31:38

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1 Q. Do you recall why you asked the question  
2 of whether it was Acting Secretary Duke's  
3 initiative or USCIS's initiative?

14:31:41  
14:31:43  
14:31:49

4 A. I would ask such a question because if the  
5 Secretary were asking me to do something, that  
6 would be one thing. If Kathy Neubel Kovarik was  
7 asking me do something, that would be another  
8 thing.

14:31:52  
14:31:54  
14:31:56  
14:32:00  
14:32:02

9 Q. How would you differentiate how you might  
10 respond depending on who was asking the question?

14:32:02  
14:32:06

11 A. If the Secretary asked me to do something  
12 and it was legal, moral and ethical, it would get  
13 done. If someone from another DH element asked me  
14 to do something, I would determine whether it fit  
15 into our priorities and was something that needed  
16 to get done or not.

14:32:08  
14:32:11  
14:32:17  
14:32:23  
14:32:26  
14:32:29

17 Q. And how would you characterize Ms. Neubel  
18 Kovarik's response to your question?

14:32:31  
14:32:37

19 A. It's not a direct answer to my question.

14:32:49

20 Q. Do you have any understanding as to why  
21 Ms. Neubel Kovarik thought you were in a better  
22 position to bring the parties together as she  
23 writes?

14:32:51  
14:33:02  
14:33:06  
14:33:07

24 MR. KIRSCHNER: Objection, calls for  
25 speculation. Counsel has testified about the -- in

14:33:07  
14:33:08

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1	characterizing the document, lack of foundation.	14:33:12
2	A. So either USCIS or the Office of Policy	14:33:18
3	would be logical offices to organize such a call.	14:33:29
4	USCIS because they were the ones preparing the memo	14:33:34
5	for the Secretary. The Office of Policy because we	14:33:39
6	were -- the Office of Policy functions as the	14:33:44
7	office which gives policy advice to the Secretary.	14:33:49
8	So either office could have organized such a call.	14:33:53
9	Q. Okay. And the next e-mail you write, half	14:33:56
10	an hour after e-mail from Ms. Nuebel Kovarik,	14:34:03
11	"Kathy, When does USCIS expect to send forward the	14:34:07
12	memo?"	14:34:13
13	What's the memo that you're referring to	14:34:14
14	here? To the extent that you know.	14:34:16
15	A. This would be the recommendation on --	14:34:17
16	again, I would have to look at the dates to see	14:34:20
17	what was in play at that time, but this is almost	14:34:22
18	surely a recommendation to the Secretary on making	14:34:25
19	a TPS decision.	14:34:30
20	Q. And you laughed when you first looked at	14:34:31
21	what I imagine to be the first memo in the chain.	14:34:33
22	Leave that aside. But do you have any	14:34:33
23	understanding as to why Ms. Petyo would write	14:34:35
24	"Ridiculous" in response to the communication chain	14:34:41
25	below?	14:34:44

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1	A. I think the important information here is	14:34:45
2	that my Chief of Staff in my absence was bringing	14:34:48
3	this series of events to the -- to the knowledge of	14:34:53
4	the front office.	14:35:02
5	Q. Okay.	14:35:03
6	MR. KIRSCHNER: I just want to -- I know	14:35:03
7	you left out -- I just want to make sure that this	14:35:04
8	was -- counsel's representation of what Ambassador	14:35:08
9	Nealon's reaction is not Ambassador Nealon's	14:35:11
10	recitation of how he reacted to this e-mail chain.	14:35:15
11	MS. MacLEAN: That's correct. And I	14:35:20
12	retract that comment. I apologize.	14:35:23
13	So thank you.	14:35:25
14	Q. I'm going to give you an exhibit that has	14:36:21
15	previously been marked as Exhibit 12.	14:36:24
16	MR. KIRSCHNER: Are we going to be able to	14:36:31
17	fit this one in?	14:36:33
18	MS. MacLEAN: No. We'll start it now, and	14:36:34
19	we'll come back to it after the phone call.	14:36:37
20	MR. KIRSCHNER: Sorry. I didn't mean	14:36:43
21	to...	14:36:48
22	A. Okay.	14:36:54
23	Q. Do you recall this document?	14:36:55
24	A. I do.	14:36:57
25	Q. Can you describe what this document was	14:36:57

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1 and the context in which it was written? 14:37:02

2 MR. KIRSCHNER: Objection to the extent it 14:37:04  
3 calls for a narrative answer. 14:37:06

4 A. So as I described, Acting Secretary Duke's 14:37:09  
5 information-gathering process in anticipation of 14:37:20  
6 making TPS decisions, she was casting a very wide 14:37:24  
7 net and reading voraciously and consulting widely, 14:37:30  
8 and she asked me to write something for her that 14:37:36  
9 gave my opinion on the TPS decision. 14:37:46

10 Q. At what point did Ambassador -- sorry, did 14:37:49  
11 Acting Secretary Duke ask you to write something to 14:37:54  
12 provide your opinion? 14:37:57

13 A. My guess is since this is dated 14:38:00  
14 October 31st, on October 30th or October 31st. So 14:38:05  
15 if she had asked for it, I would have done it and 14:38:09  
16 sent it up to her immediately. 14:38:12

17 Q. Consistent with your previous answer about 14:38:14  
18 responding to the requests from the Acting 14:38:19  
19 Secretary or the Secretary. 14:38:22

20 Do you recall the basis for your -- your 14:38:22  
21 representations that are included within this 14:38:32  
22 memorandum for the Acting Secretary? 14:38:33

23 A. Yes. 14:38:36

24 MR. KIRSCHNER: Going to object as vague. 14:38:36

25 Q. What was -- what was the basis for your 14:38:39

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1 representations expressed in this memorandum for  
2 the Acting Secretary?

3 A. So I knew that she had talked to a  
4 tremendous number of people, I knew that she had  
5 read volumes and volumes. She had consulted with  
6 faith-based groups, with foreign governments, with  
7 civil society, and so what I wanted to do is write  
8 her something that was very short and pithy and  
9 which might help her weed through and make sense of  
10 everything that she had heard and read.

11 Q. Had you expressed -- well, is it fair to  
12 characterize the representations that you include  
13 within this memo as expressions of concern about  
14 the possible termination of TPS for Honduras,  
15 Nicaragua, and El Salvador?

16 MR. KIRSCHNER: Objection, counsel is  
17 testifying. Ambassador Nealon should be able to  
18 address the memo in his own words.

19 Q. How would you characterize the  
20 recommendation that you're making within this memo?

21 A. I tried to write something that I  
22 considered to be very pragmatic. And so, I mean, I  
23 think the memo speaks for itself. I don't feel the  
24 need to describe the memo since you have it. But  
25 that was my motivation. I wanted to try and help

14:38:40

14:38:43

14:38:46

14:38:49

14:38:52

14:38:57

14:39:01

14:39:04

14:39:12

14:39:14

14:39:19

14:39:22

14:39:25

14:39:34

14:39:38

14:39:40

14:39:43

14:39:46

14:39:48

14:39:52

14:39:56

14:39:58

14:40:01

14:40:04

14:40:07

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1 her because she had spoken to so many people and  
2 read so much, I wanted to try and help her boil  
3 things down.

14:40:10  
14:40:17  
14:40:21

4 Q. And had you expressed sentiments that are  
5 similar to the sentiments that are expressed here  
6 to Acting Secretary Duke prior to putting it in  
7 written form here?

14:40:22  
14:40:26  
14:40:31  
14:40:34

8 A. Yes.

14:40:35

9 Q. Do you remember more or less when you made  
10 the first expressions to Acting Secretary Duke that  
11 you would recommend the extension of TPS for  
12 Honduras, Nicaragua, and El Salvador?

14:40:37  
14:40:41  
14:40:50  
14:40:53

13 A. No. I don't -- I don't remember a  
14 specific first conversation.

14:41:01  
14:41:02

15 Q. Was this conversation -- or were these  
16 concerns or representations that are included  
17 within this memo following conversations that took  
18 place over days before that or weeks before that or  
19 months before that, in your recollection?

14:41:04  
14:41:07  
14:41:10  
14:41:15  
14:41:17

20 MR. KIRSCHNER: Objection, counsel  
21 testifying about concerns or recommendations. I  
22 just want Ambassador Nealon to speak about the memo  
23 in his own words.

14:41:19  
14:41:20  
14:41:23  
14:41:26

24 A. So as I've described, this decision was  
25 very much on her mind. She was struggling with it

14:41:31  
14:41:34

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1 in a good sense of the word, struggling with it as 14:41:38  
2 a -- as an intelligent, hard-working government 14:41:42  
3 employee would struggle with a very consequential 14:41:47  
4 decision. 14:41:50

5 And so, again, this was just my attempt to 14:41:51  
6 write something that was very short, pragmatic, and 14:41:55  
7 that might be of some use to her. 14:42:00

8 Q. Had you expressed the positions that 14:42:02  
9 you've outlined in this memo to others in the 14:42:06  
10 Department prior to the writing of this memo? 14:42:08

11 A. Yes. Certainly, I mean, I had spoken up 14:42:12  
12 at meetings where TPS was raised. You know, 14:42:16  
13 frankly, the other reason I wrote the memo is 14:42:20  
14 because I did have a different perspective -- a 14:42:23  
15 unique perspective, having been the Ambassador to 14:42:26  
16 Honduras, a TPS country, and knowing firsthand the 14:42:30  
17 country conditions in a way that other people 14:42:34  
18 simply didn't. 14:42:36

19 And I thought that articulating that very 14:42:37  
20 briefly for her also might help her. 14:42:41

21 Q. How did your knowledge of the country 14:42:43  
22 conditions in your position as Ambassador to 14:42:54  
23 Honduras inform your recommendation to Acting 14:42:57  
24 Secretary Duke? 14:43:03

25 A. Well, again, I -- I would say that I 14:43:03

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1 understood the foreign policy implications better 14:43:13  
2 than most people did, the foreign policy 14:43:18  
3 implications of extending or of terminating. 14:43:20  
  
4 I understood the -- the possible effects 14:43:28  
5 on migration, on our ability to help the countries 14:43:32  
6 of Central America stem further migration if we 14:43:37  
7 were to send back large numbers of TPS grantees. 14:43:43  
  
8 So, I mean, I think this is all pretty 14:43:47  
9 clear. 14:43:51  
  
10 Q. I'm not suggesting that it's not clear. 14:43:51  
11 It's just hard to respond to it and not put words 14:43:55  
12 in your mouth, but allow a further conversation 14:43:58  
13 about this. So I appreciate your efforts to try to 14:44:01  
14 elaborate on that. 14:44:03  
  
15 Do you know who this memo was shared with? 14:44:05  
16 A. Um, so I would have sent it to -- you 14:44:08  
17 know, I honestly don't recall exactly how I 14:44:29  
18 delivered it to her. I don't recall whether I went 14:44:32  
19 through the Executive Secretary process or whether 14:44:35  
20 she asked me to send it directly to her, to her 14:44:37  
21 Chief of Staff. I just don't recall. 14:44:41  
  
22 Q. Okay. 14:44:43  
23 A. It -- it probably went through the 14:44:44  
24 Executive Secretary process because other people in 14:44:45  
25 DHS saw it, so it probably did get disseminated 14:44:49

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1 through the process.

14:44:53

2 Q. We talked previously about the debate, if  
3 it's possible to characterize it that way, around a  
4 strict constructionist or a more expansive view of  
5 the TPS statute.

14:44:54

14:45:01

14:45:04

14:45:08

6 How would you characterize the concerns  
7 that you've identified here or the factors that  
8 you've identified here as fitting into an  
9 interpretation of the TPS statute?

14:45:15

14:45:17

14:45:20

14:45:25

10 Do you think --

14:45:31

11 MS. MacLEAN: Let me step back and try to  
12 make that a clearer question.

14:45:32

14:45:34

13 Q. The factors that you've identified here,  
14 do you think those factors are relevant factors in  
15 considering whether TPS for a country may be  
16 extended or should be terminated?

14:45:35

14:45:37

14:45:42

14:45:47

17 MR. KIRSCHNER: Objection, calling for  
18 legal conclusions.

14:45:51

14:45:53

19 A. So, yes, I believe that -- that the  
20 factors I described earlier that enter into the  
21 Secretary's decision-making process are all  
22 legitimate factors to be considered, so I certainly  
23 considered that the statute itself, whether you --  
24 whether you interpret it strictly or more flexibly  
25 is very important.

14:45:58

14:46:05

14:46:09

14:46:12

14:46:17

14:46:20

14:46:24

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1 The temporal nature of temporary protected  
2 status is very important, and I addressed that in  
3 the memo. And the policy considerations are very  
4 important. So I consider all those things to be  
5 important, relevant, legitimate considerations.

6 Q. And when you were Ambassador to Honduras,  
7 was it your understanding that these factors were  
8 considered in the TPS determinations that occurred  
9 at that time?

10 MR. KIRSCHNER: Objection, vague,  
11 speculative.

12           A. So -- so honestly, I didn't have much of a  
13       window into the final TPS decision when I was  
14       Ambassador to Honduras. We provided our input and,  
15       you know, it went through the policy churn and a  
16       decision came back. But I didn't have particular  
17       insight into what happened in Washington.

18 Q. Do you recall providing similar feedback  
19 or related feedback to the Department of State  
20 regarding TPS when TPS for Honduras was up for  
21 review while you were Ambassador to Honduras?

22 MR. KIRSCHNER: Objection. To the extent  
23 this is calling for internal government  
24 deliberations from when you were Ambassador to  
25 Honduras, I would instruct you not to answer.

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1 To the extent you are answering just 14:47:47  
2 whether you provided feedback or provided input, 14:47:47  
3 you could answer that question. But the internal 14:47:48  
4 government deliberations and recommendations that 14:47:49  
5 were made, I would instruct you not to answer. 14:47:52

6 A. Yes. We did provide input to the 14:47:55  
7 Department of State when TPS came up for renewal 14:47:58  
8 when I was Ambassador to Honduras. 14:48:01

9 Q. And do you recall providing input that 14:48:03  
10 looked at considerations, like the considerations 14:48:14  
11 that you had included here in this memo for the 14:48:17  
12 Acting Secretary? 14:48:21

13 MR. KIRSCHNER: Objection. To the extent 14:48:22  
14 that kind of what input and what factors were to be 14:48:24  
15 part of your consideration, that would be revealing 14:48:26  
16 of internal government deliberations, I would 14:48:29  
17 instruct you not to answer. 14:48:33

18 MS. MacLEAN: I would note, Counsel, that 14:48:35  
19 it is outlined here, that level of detail, about a 14:48:38  
20 process that had not been resolved at that point. 14:48:41  
21 But I'll leave it at that. And I realize this 14:48:44  
22 question is still outstanding by the court. 14:48:47

23 MR. KIRSCHNER: And I will say that -- 14:48:49  
24 that we -- this just shows how revealing we have 14:48:50  
25 been of deliberations in terms of making it 14:48:53

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1 where -- a -- we are willing to provide formal 14:48:59  
2 deliberations concerning the decisions that were -- 14:49:03  
3 are at issue in this litigation. And so I'll leave 14:49:05  
4 it at that, that there's a disagreement of where we 14:49:10  
5 are drawing the line on deliberative process. 14:49:12

6 MS. MacLEAN: Okay. So I think this is a 14:49:15  
7 good stopping point. I know you get a few minutes 14:49:18  
8 for your call, and hopefully a little bit of a 14:49:20  
9 break beforehand. So go off the record. 14:49:24

10 THE VIDEOGRAPHER: The time is 2:49. We 14:49:26  
11 are off the record. 14:49:31

12 (Proceedings interrupted at 2:49 p.m. and 14:49:31  
13 reconvened at 3:11 p.m.) 14:49:32

14 THE VIDEOGRAPHER: The time is 3:11. We 15:10:43  
15 are back on the record. 15:11:05

16 MS. MacLEAN: And Counsel, you had 15:11:08  
17 identified there was one clarifying question you 15:11:09  
18 wanted to ask. 15:11:12

19 MR. KIRSCHNER: Yes. Counsel had asked 15:11:14  
20 you about who this -- this document dated 15:11:16  
21 October 31st from you to Acting Secretary Duke on a 15:11:19  
22 coming designation decision for TPS, who it's 15:11:28  
23 distributed to, and I just want to ask for 15:11:33  
24 clarification if you're aware whether it was in 15:11:36  
25 government or in the public, if it was provided in 15:11:36

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1 some fashion, or it was in the possession of 15:11:38  
2 anybody else outside of the ones you identified 15:11:40  
3 within the Department of Homeland Security? 15:11:43  
  
4 THE WITNESS: Yes. So I was told that the 15:11:46  
5 memo was sent to the White House, and I don't know 15:11:50  
6 specifically who at the White House. And I know 15:11:54  
7 the memo was also leaked to the media because a 15:11:56  
8 story appeared -- a couple of stories appeared in 15:12:03  
9 Breitbart. 15:12:06  
  
10 MS. MacLEAN: Thank you for that 15:12:10  
11 clarification. 15:12:11  
  
12 BY MS. MacLEAN: 15:12:12  
  
13 Q. Do you know how the memo was sent to the 15:12:12  
14 White House? 15:12:15  
  
15 A. I don't. 15:12:15  
  
16 Q. Do you know who sent the memo to the White 15:12:15  
17 House? 15:12:19  
  
18 A. I don't. 15:12:19  
  
19 Q. How do you know that a memo was sent to 15:12:20  
20 the White House, if I may ask? 15:12:23  
  
21 A. I don't recall who told me, but I was told 15:12:23  
22 that it was sent to the White House. 15:12:26  
  
23 Q. Okay. So do you know when roughly it was 15:12:29  
24 sent to the White House? Was it soon after the 15:12:35  
25 memo was written or substantially after the memo 15:12:38

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1	was written?	15:12:40
2	A. Soon after the memo was written.	15:12:41
3	Q. When you say "soon," do you mean in the --	15:12:43
4	A. Matter of days.	15:12:46
5	Q. Matter of days.	15:12:47
6	Do you know why Acting Secretary Duke	15:12:49
7	asked you to write this memo?	15:12:59
8	MS. MacLEAN: Let me step back.	15:13:02
9	Q. Was Acting Secretary Duke aware of your	15:13:03
10	position on the determination -- the TPS	15:13:07
11	determination for Honduras, Nicaragua, and El	15:13:14
12	Salvador at the time she asked you to write the	15:13:18
13	memo?	15:13:20
14	A. Yes, I believe she was. I don't recall	15:13:22
15	coming out and banging my fist and telling her	15:13:32
16	that, you know, this is the decision you have to	15:13:37
17	make. I do remember speaking up in meetings and --	15:13:38
18	and making points and cases to counter other points	15:13:41
19	that other people were making.	15:13:46
20	Q. Um-hum.	15:13:48
21	A. And she also knew that I had this other	15:13:49
22	experience that she didn't have and that others in	15:13:54
23	the Department didn't have and she wanted to have	15:13:56
24	the benefit of that perspective.	15:13:59
25	Q. Had you shared prior to writing this memo	15:14:03

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1 your thoughts about TPS for Honduras, Nicaragua, 15:14:10  
2 and El Salvador as informed by your time as 15:14:15  
3 Ambassador to Honduras? 15:14:18

4 MR. KIRSCHNER: Objection, confusing. 15:14:19

5 A. So what I tried to do in discussions about 15:14:28  
6 these countries was broaden the discussion beyond 15:14:31  
7 just the statute or the temporary nature of 15:14:34  
8 temporary protected status and bring in a couple of 15:14:37  
9 other elements, one of them being what I believe I 15:14:41  
10 called the humanitarian or fairness issue. What do 15:14:46  
11 you do with people who have been in the country for 15:14:49  
12 20 years or more, who have American citizen 15:14:53  
13 children, who no longer have ties to the country to 15:14:56  
14 which we are going to send them back to, and who 15:15:00  
15 could compound U.S. policy in those countries, 15:15:05  
16 which is aimed at getting at the push, the very 15:15:10  
17 push factors of migration, the very issues that 15:15:13  
18 force people to migrate. 15:15:17

19 So those were perspectives that she wasn't 15:15:19  
20 necessarily getting in other quarters, so I think 15:15:23  
21 that's why she asked me to write the memo. 15:15:27

22 Q. Is it your understanding that Secretary -- 15:15:29  
23 Acting Secretary Duke was interested not only in 15:15:35  
24 your understanding of these issues, some of which 15:15:39  
25 she already had access to from conversations that 15:15:45

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1 you'd had previously, but also a written document  
2 that expressed that TPS should be extended for  
3 Honduras, Nicaragua, and El Salvador?

15:15:48

4 A. I don't know.

15:16:00

5 Q. Okay. Do you have any understanding of  
6 why she asked you to put in writing your thoughts?

15:16:00

15:16:11

7 MR. KIRSCHNER: Objection, asked and  
8 answered.

15:16:13

15:16:15

9 A. No, not really. I mean, I really think  
10 she was -- she was struggling with an important  
11 decision and she was looking for help, and she  
12 thought I might have some perspectives that would  
13 be useful for her. I think it's really as simple  
14 as that.

15:16:16

15:16:29

15:16:33

15:16:40

15:16:42

15:16:45

15 Q. Um-hum. Do you know how the input that  
16 you provided elaborated in this memo was used to  
17 inform the decision that was ultimately taken by --

15:16:46

15:16:51

15:16:54

18 A. I don't.

15:16:57

19 Q. -- Acting Secretary Duke?

15:16:58

20 THE WITNESS: Sorry.

15:17:01

21 A. I don't.

15:17:03

22 (Exhibit 40, DHS\_RFPD\_00000040, marked for  
23 identification.)

15:17:18

15:17:54

24 MR. KIRSCHNER: Could we identify the  
25 exhibit for the record?

15:17:54

15:17:56

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1	MS. MacLEAN: Yes. I've just introduced	15:17:57
2	Exhibit 40, which is a memoranda from Acting	15:18:00
3	Secretary Duke to USCIS Director Cissna and the	15:18:06
4	witness here from November 6, 2017.	15:18:18
5	Q. So can you describe what this document is	15:18:27
6	that we're looking at?	15:18:32
7	A. This is Acting Secretary Duke's decision	15:18:32
8	to terminate TPS for Nicaragua.	15:18:35
9	Q. And this is less than a week after the	15:18:37
10	memo that you provided; is that correct?	15:18:40
11	A. Yes.	15:18:42
12	Q. Did Acting Secretary Duke make any	15:18:42
13	decisions with regard to the two other countries	15:18:48
14	that were included in your memo for the Acting	15:18:51
15	Secretary of October 31, 2017 at this time?	15:18:56
16	A. You know, I honestly don't recall the	15:19:01
17	precise timeline of the various TPS decisions.	15:19:04
18	Q. Let me go back to the exhibit that was	15:19:12
19	previously marked as Exhibit 12, which is your memo	15:19:15
20	to Acting Secretary Duke. You had included in that	15:19:17
21	memo Honduras, Nicaragua, and El Salvador. Why did	15:19:23
22	you include all three of those countries?	15:19:27
23	A. It's actually a very good question and in	15:19:30
24	retrospect and in re-reading the memo, the memo is	15:19:33
25	really talking about Honduras and El Salvador. So	15:19:37

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1 it's unfortunate that I marked the memo with 15:19:40  
2 Nicaragua as well, because Nicaragua wasn't really 15:19:44  
3 subject to the same kind of discussion as the other 15:19:48  
4 two countries. First of all, Nicaragua had not 15:19:51  
5 requested a renewal of temporary protected status 15:19:57  
6 and secondly, the country conditions were just 15:20:00  
7 very, very different at that time, a lot less 15:20:07  
8 violence, for example, and I don't think anybody 15:20:09  
9 saw a real problem in Nicaragua taking back 15:20:14  
10 repatriated citizens. So Nicaragua was always a 15:20:17  
11 different problem set than Honduras and El 15:20:27  
12 Salvador. 15:20:30

13 Q. Was it requested by Acting Secretary Duke 15:20:30  
14 that you provide a memo concerning Honduras, 15:20:33  
15 Nicaragua, and El Salvador? 15:20:38

16 A. You know, I don't recall exactly what she 15:20:38  
17 asked me. But I do recall that she was really 15:20:40  
18 ruminating about El Salvador and Honduras. There 15:20:48  
19 was much less discussion -- I actually don't recall 15:20:53  
20 very much discussion at all about Nicaragua. 15:20:54

21 Q. Do you recall that Acting Secretary Duke 15:20:57  
22 at some point during her tenure did not make a 15:21:07  
23 decision about the TPS designation -- 15:21:10

24 MS. MacLEAN: Sorry. Let me go back. 15:21:13

25 Q. Do you recall that at some point during 15:21:15

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1	her tenure as Acting Secretary, Acting Secretary	15:21:17
2	Duke did not make a decision about the TPS	15:21:21
3	determination for Honduras allowing it to	15:21:28
4	automatically extend for six months?	15:21:31
5	A. Yes.	15:21:34
6	MR. KIRSCHNER: Objection. I was going to	15:21:35
7	say objection. Counsel testifying and	15:21:36
8	characterizing the evidence. I'd ask Ambassador	15:21:39
9	Nealon be able to put it in his own words.	15:21:40
10	Q. Then a week later after your memo, Acting	15:21:43
11	Secretary Duke made a determination with regard to	15:21:50
12	Nicaragua. Do you recall if this is the time	15:21:51
13	period where Acting Secretary Duke did not make a	15:21:53
14	decision with regard to Honduras, allowing Honduras	15:21:58
15	to automatically extend?	15:22:02
16	A. Again, I simply don't remember the exact	15:22:04
17	chronology of the various decisions.	15:22:07
18	Q. Fair enough.	15:22:09
19	(Exhibit 41, NewsRoom article dated May 10,	15:22:34
20	2018, marked for identification.)	15:22:36
21	Q. So I'm marking the next exhibit as	15:22:36
22	Exhibit 41. And this is an op-ed in the Washington	15:22:41
23	Post that you wrote with Ambassador Feeley on	15:22:48
24	May 10th, 2018.	15:22:55
25	A. Okay.	15:24:24

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1 Q. Was the decision to terminate TPS for  
2 Honduras ultimately made during your tenure at DHS? 15:24:31  
15:24:34

3 A. Um, I don't believe so. I believe it was 15:24:37  
4 made after I left. 15:24:42

5 Q. If I could go back to something you said 15:24:43  
6 at the outset. You mentioned when I asked very 15:24:46  
7 early on why you decided to leave the Department, 15:24:52  
8 can you elaborate a bit more about why you decided 15:25:00  
9 to leave the Department? 15:25:04

10 MR. KIRSCHNER: Objection, calls for a 15:25:05  
11 narrative answer. 15:25:07

12 A. Yeah. I mean, I would refer you back to 15:25:09  
13 how I answered that question previously. I think 15:25:13  
14 that answer stands. 15:25:16

15 Q. You mentioned, if I recall, that you were 15:25:18  
16 a political appointee and didn't feel 15:25:27  
17 comfortable -- if you were a political appointee 15:25:31  
18 and didn't feel comfortable supporting the range of 15:25:33  
19 policies that were required as a political 15:25:36  
20 appointee, you didn't feel comfortable in that 15:25:38  
21 position. Is that a reasonably fair 15:25:41  
22 characterization? 15:25:43

23 A. I think what I said, and again it would 15:25:44  
24 probably be best to refer back to the transcript 15:25:49  
25 because I stand by what I said. But I believe what 15:25:50

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1 I said was that I felt obligated to leave as a  
2 political appointee who felt he couldn't fully  
3 represent all of the administration's policies.

15:25:54

4 Q. Are there certain policies that led you to  
5 feel obligated to leave?

15:26:07

6 THE WITNESS: Do I have to go into this?

15:26:30

7 I mean --

15:26:32

8 A. I'll ask you. So I feel like I gave you  
9 an honest and heartfelt answer --

15:26:34

10 Q. I appreciate it.

15:26:41

11 A. -- to the question. And I don't really  
12 have more to say than that. I think if we go back  
13 and look at what I said, it stands on its own and  
14 that's why I left.

15:26:42

15:26:45

15:26:51

15:26:54

15:26:55

15:26:58

15:27:00

15:27:03

15:27:06

15:27:10

15:27:12

15:27:14

15:27:16

Q. Let me ask just maybe one other question  
more specifically related to this. And I  
apologize, I understand that this is after a career  
of service to the country, I imagine it was an  
intense decision without putting words in your  
mouth and a difficult one, and I appreciate that  
it's a heartfelt answer, and it's on the record,  
and I understand that there are complications with  
that.

15:27:17

24 Were the discussions around TPS -- did the  
25 discussions around TPS and the administration's

15:27:21

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1 decisions with regard to TPS inform your decision  
2 to leave?

15:27:24  
15:27:26

3 A. You know, I think I said in my original  
4 answer that in 34 years in government, I won and  
5 lost hundreds of policy battles, and so I'm not a  
6 guy who would, you know, get up and take his  
7 checkerboard with him because he lost a policy  
8 fight, right? So that's really not why I left.

15:27:27  
15:27:30  
15:27:33  
15:27:37  
15:27:40  
15:27:43

9 I left really because I didn't feel like I  
10 could represent the administration, and so I felt  
11 obligated to leave. I didn't leave in anger, I  
12 left in sorrow.

15:27:49  
15:27:53  
15:27:56  
15:27:59

13 Q. I really appreciate that, and I apologize  
14 for the probing questions on I'm sure a difficult  
15 topic.

15:28:02  
15:28:05  
15:28:10

16 If I could turn to the op-ed that you  
17 wrote. What led you to write the op-ed that you  
18 wrote here?

15:28:12  
15:28:14  
15:28:18

19 A. So after 34 years in government, I was  
20 suddenly unleashed and able to express my opinion  
21 openly and publicly. And so I've been doing that  
22 since I left government, and this is an example of  
23 that.

15:28:19  
15:28:30  
15:28:36  
15:28:42  
15:28:44

24 Q. Were you particularly concerned around the  
25 decision to terminate TPS for Honduras, has that

15:28:44  
15:28:54

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1 been an area that you have been particularly  
2 outspoken on, would you say?

15:28:58

3 MR. KIRSCHNER: Objection, vague, not  
4 temporal in scope.

15:29:01

15:29:02

5 A. So yeah, I remain deeply interested in  
6 Honduras and in U.S. policy towards Honduras and in  
7 the ability of U.S. policy to do what I was trying  
8 to do when I was there, which is get at the push  
9 factors of migration, because I believe this is  
10 sort of the untold story of the immigration debate  
11 in this country. I think the solution lies there  
12 and not so much at the border. So I remain deeply  
13 interested, and that's why I write about it.

15:29:09

15:29:16

15:29:21

15:29:26

15:29:29

15:29:34

15:29:38

15:29:42

15:29:46

14 Q. So on the bottom of the first page of this  
15 op-ed, in the paragraph that starts with "as former  
16 American ambassadors" --

15:29:49

15:29:57

15:30:02

17 MR. KIRSCHNER: Ambassador Nealon, I think  
18 that counsel is referring to the previous page.

15:30:05

15:30:08

19 THE WITNESS: Sorry. Thanks.

15:30:10

20 Q. It's the last paragraph on the first page.  
21 It says, "As former American ambassadors with long  
22 experience in Central America and with the TPS  
23 program, we have to ask why does the administration  
24 think this makes sense as an America first policy."

15:30:12

15:30:14

15:30:17

15:30:19

15:30:22

25 Based on what you had written before, the

15:30:25

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1	"this" there seems to refer to the termination of	15:30:28
2	TPS for Honduras. Is that accurate?	15:30:32
3	A. Yes.	15:30:35
4	Q. Okay. Why did you write here that the	15:30:36
5	administration is interpreting the termination of	15:30:50
6	TPS as an America first policy?	15:30:53
7	MR. KIRSCHNER: Objection, counsel is	15:30:55
8	testifying about her interpretation of the language	15:30:56
9	in the article. I would ask Ambassador Nealon to	15:30:59
10	address this in his own words.	15:31:09
11	MS. MacLEAN: Objection noted.	15:31:11
12	A. So, I believe, and this is a personal	15:31:12
13	opinion, that the administration believes that the	15:31:16
14	cancellation of TPS is one of many, many elements	15:31:19
15	of a migration -- immigration policy which is part	15:31:24
16	of the administration's America First policy.	15:31:28
17	Q. What makes you think that?	15:31:34
18	A. I suppose years of experience.	15:31:36
19	Q. Does that include experience that you had	15:31:53
20	while you were at the Department?	15:31:55
21	A. Yes.	15:31:58
22	Q. What experience that you had at the	15:31:59
23	Department would lead you to express that the	15:32:01
24	administration sees the termination of TPS as an	15:32:08
25	America First policy?	15:32:11

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1 A. I mean, to be very clear and very honest,  
2 I think the President has been very clear, very  
3 honest about his views on border security and  
4 immigration. I don't think there's any  
5 disagreement or misunderstanding about what the  
6 President's policies are, so I -- yeah. I think  
7 he's very clear.

8           Q. Are there specific things that you would  
9 point to from the President that make clear what  
10 his policies are with regard to immigration and  
11 border security and how that might apply to the  
12 context of TPS?

13 MR. KIRSCHNER: Objection, calls for  
14 speculation.

15           A. Yeah. I really wouldn't want to speculate  
16 about what the President thinks. I can comment on  
17 -- as any of us can about what the President says.

18           Q. But from your experience and your  
19 expertise and your involvement in these matters,  
20 you've identified that it seems very clear what the  
21 President's perspective is with regard to, you  
22 know, immigration issues tied to an America First  
23 policy. And within this op-ed, you've identified  
24 how you see TPS fitting into that. So recognizing  
25 you don't have direct conversations, I imagine,

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1 with President Trump, although you haven't said one  
2 way or the other, what makes you understand that  
3 TPS specifically fits into the specific America  
4 First policy of the current administration and the  
5 President?

6 A. You know, honestly I don't know how  
7 helpful I can be to you in this line of  
8 questioning. I would just go back to my belief  
9 that the President has been very, very clear about  
10 his feelings about border security. He has talked  
11 since the beginning of the campaign about building  
12 a border wall. He's talked about interior  
13 enforcement. We've seen a policy of family  
14 separation. We've seen actions by the Attorney  
15 General to limit the types of people who can ask  
16 for asylum. We've seen the cancellation of DACA.  
17 We've seen the cancellation of TPS. So I think all  
18 of these things are part of an administration  
19 immigration policy.

20 Q. Did you hear America First discussed in  
21 the context of TPS while you were at DHS?

22 A. I don't recall hearing that, no.

23 Q. If you turn to the top of the second page  
24 here, let me just review. I think you reviewed the  
25 entire article, but just review the top two

15:33:42

15:33:47

15:33:52

15:34:00

15:34:06

15:34:06

15:34:12

15:34:15

15:34:17

15:34:20

15:34:23

15:34:25

15:34:29

15:34:31

15:34:34

15:34:36

15:34:41

15:34:44

15:34:47

15:34:54

15:34:57

15:35:02

15:35:04

15:35:35

15:35:40

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1	paragraphs.	15:35:42
2	A. Okay.	15:35:56
3	Q. You say here, "The justifications for	15:35:56
4	termination are two-fold. The administration	15:36:06
5	reminds us that temporary protected status was	15:36:08
6	always meant to be temporary. It also argues that	15:36:12
7	the original conditions for which TPS was granted:	15:36:12
8	The devastating Hurricane Mitch in 1998 that killed	15:36:16
9	more than 7,000 people in Honduras alone no longer	15:36:20
10	exists." Beginning of the next paragraph, "We	15:36:23
11	understand how such arguments would make sense	15:36:25
12	under a strict constructionist view."	15:36:28
13	We spoke about this a bit earlier today.	15:36:31
14	But was it your understanding at the time that you	15:36:34
15	wrote this op-ed that the strict constructionist	15:36:37
16	view of the TPS statute essentially won out in DHS?	15:36:43
17	MR. KIRSCHNER: Objection, calls for	15:36:49
18	speculation.	15:37:00
19	A. So whether the strict constructionist view	15:37:00
20	is the ultimate reason why the secretaries made	15:37:03
21	their decisions about TPS, I don't know. But to	15:37:07
22	answer your question, I believe that a strict	15:37:10
23	interpretation of the statute was an important	15:37:17
24	element in those decisions.	15:37:20
25	Q. Do you believe that that was the only way	15:37:22

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1 that TPS -- the TPS statute could have been  
2 interpreted?

15:37:26  
15:37:31

3 MR. KIRSCHNER: Objection, calls for a  
4 legal conclusion and calls for speculation, and  
5 also it's vague and confusing what you mean by that  
6 question.

15:37:31  
15:37:34  
15:37:40  
15:37:44

7 Q. If you understand the question, you can  
8 answer it.

15:37:44  
15:37:45

9 A. So my understanding was that successive  
10 administrations had renewed TPS for Honduras long  
11 after the conditions that resulted from Hurricane  
12 Mitch had begun to dissipate or had dissipated.

15:37:49  
15:37:54  
15:38:04  
15:38:08

13 Q. So is it your understanding that there was  
14 a new interpretation of the TPS statute that didn't  
15 allow that under this administration?

15:38:15  
15:38:17  
15:38:20

16 MR. KIRSCHNER: Objection, calls for  
17 speculation.

15:38:22  
15:38:26

18 A. So my understanding, and this is a  
19 personal opinion, is that, again, I believe this  
20 viewpoint was one of the elements that went into  
21 those decisions. But, yes, I believe that -- that  
22 there was a belief among many people in the  
23 administration that their hands were tied and that  
24 because the statute says that -- that TPS should be  
25 based on the existing conditions, that there was no

15:38:26  
15:38:32  
15:38:37  
15:38:39  
15:38:46  
15:38:49  
15:38:53  
15:39:00

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1	choice but to terminate.	15:39:08
2	Q. You just said a moment ago that successive	15:39:09
3	administrations had renewed TPS for Honduras long	15:39:13
4	after the conditions directly related to Hurricane	15:39:17
5	Mitch had ended, but the current administration	15:39:20
6	felt that their hands were tied. What created this	15:39:22
7	distinction where the current administration --	15:39:26
8	secretaries within the current administration would	15:39:31
9	feel their hands were tied when previous	15:39:33
10	secretaries had extended TPS for Honduras over and	15:39:36
11	over again?	15:39:39
12	MR. KIRSCHNER: Objection,	15:39:40
13	mischaracterizes testimony, calls for speculation.	15:39:40
14	A. So, I mean, personal opinion again, I	15:39:48
15	think it's simply different interpretations of the	15:39:56
16	statute. And I'm not a lawyer, so I can't speak to	15:40:01
17	the benefits of one or the other.	15:40:07
18	Q. Do you understand that these were	15:40:12
19	different interpretations, essentially the	15:40:15
20	interpretation prior to this administration and the	15:40:17
21	interpretation of the TPS statute that was used by	15:40:20
22	this administration?	15:40:25
23	MR. KIRSCHNER: Objection,	15:40:25
24	mischaracterizes testimony. Counsel keeps	15:40:26
25	restating testimony that Ambassador Nealon never	15:40:28

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1	said.	15:40:32
2	MS. MacLEAN: Objection noted.	15:40:33
3	Q. I'm asking the question do you feel this	15:40:35
4	was a different interpretation?	15:40:37
5	MS. MacLEAN: But objection noted.	15:40:39
6	Q. So do you feel this was a different	15:40:41
7	interpretation from previous secretaries to	15:40:44
8	secretaries under this administration?	15:40:46
9	MR. KIRSCHNER: Objection, foundation for	15:40:48
10	what you mean by "this interpretation." Calls for	15:40:49
11	speculation.	15:40:53
12	Q. Ambassador Nealon, I'll ask one more time,	15:40:53
13	hopefully we can ask this clearly. But was it your	15:40:56
14	understanding that the interpretation of the TPS	15:41:01
15	statute that was used by prior administrations that	15:41:04
16	allowed for consideration of factors beyond the	15:41:08
17	originating condition in the case of Honduras,	15:41:13
18	Hurricane Mitch, was different from the	15:41:17
19	interpretation of the TPS statute that was used by	15:41:22
20	the secretaries under the current administration?	15:41:25
21	MR. KIRSCHNER: Same objection, foundation	15:41:29
22	and speculative.	15:41:30
23	A. Yes. And I think it's important to note	15:41:32
24	that I believe both points of view are legitimate.	15:41:37
25	Both in my view are -- are rational interpretations	15:41:43

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1 of the statute. So I think that there was a change 15:41:51  
2 in policy, but I don't think it was necessarily 15:41:54  
3 irrational change in policy. It's a defensible 15:42:00  
4 change in policy. 15:42:06

5 Q. Do you recall conversations within DHS 15:42:06  
6 that recognized that this was a change in policy? 15:42:12

7 MR. KIRSCHNER: Objection. Ambassador 15:42:18  
8 Nealon, to the extent this question calls for 15:42:20  
9 internal government deliberations, I'll instruct 15:42:23  
10 you not to answer. To the extent this question 15:42:26  
11 just calls for whether you are understanding 15:42:28  
12 conversations to have taken place without revealing 15:42:31  
13 those deliberations, you can answer. 15:42:33

14 THE WITNESS: Thank you. 15:42:39

15 A. Would you restate the question? 15:42:41

16 Q. Yes. Do you recall conversations during 15:42:43  
17 your time at DHS that recognized that there was a 15:42:47  
18 change in policy related to the interpretation of 15:42:52  
19 the TPS statute? 15:42:56

20 A. Yes. 15:42:58

21 Q. Can you recall one of those conversations, 15:42:59  
22 when it took place and with whom? 15:43:05

23 A. No. I don't recall. Again, this is very 15:43:08  
24 difficult for me to recall specific conversations 15:43:12  
25 and who said what and -- but I certainly do 15:43:14

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1	remember, yes, conversations related to that issue.	15:43:18
2	Q. Do you recall Secretary -- then Secretary	15:43:22
3	General Kelly being involved in some of those	15:43:33
4	conversations?	15:43:36
5	A. I don't.	15:43:39
6	Q. Do you recall Acting Secretary Duke being	15:43:39
7	involved in those conversations?	15:43:43
8	A. I do.	15:43:45
9	Q. Do you recall Secretary Nielsen being	15:43:46
10	involved in those conversations?	15:43:49
11	A. I don't.	15:43:50
12	Q. Do you recall whether the White House or	15:43:56
13	any entity that was a component of the White House	15:44:00
14	or connected to -- not connected to --	15:44:03
15	MS. MacLEAN: Sorry. Go back.	15:44:08
16	Q. Do you recall whether the White House or	15:44:10
17	personnel within the White House were engaged	15:44:13
18	directly or indirectly with regard to the	15:44:16
19	interpretation of the TPS statute?	15:44:18
20	A. So I don't recall anyone from the White	15:44:26
21	House speaking to me directly about that. But I do	15:44:28
22	recall hearing that -- that people from the White	15:44:31
23	House were engaged with other people in DHS on that	15:44:37
24	subject.	15:44:43
25	Q. Do you recall who from the White House was	15:44:43

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1 engaged on that subject, understanding that you 15:44:46  
2 were not directly involved in those conversations? 15:44:47  
3 MR. KIRSCHNER: I just want to make sure 15:44:49  
4 my objection on deliberate process is clear. I'm 15:44:51  
5 instructing you not to answer about the nature one 15:44:54  
6 way or the other about whether there is a change in 15:44:57  
7 interpretation or should be or should not be 15:44:59  
8 interpretation, but that just that there were 15:45:02  
9 conversations on this topic that you can answer. 15:45:04  
10 Like -- I'm allowing to go forward questions of 15:45:09  
11 whether the question of interpretation -- 15:45:13  
12 THE WITNESS: Okay. 15:45:16  
13 MR. KIRSCHNER: -- the conversation about 15:45:17  
14 interpretation took place along the lines of what 15:45:19  
15 counsel's asking, but the nature one way or the 15:45:22  
16 other, whether there should be or should not be or 15:45:24  
17 whether there was an interpretation, I just want to 15:45:27  
18 make clear for the record that to the extent that 15:45:28  
19 the questions are calling for that question, that 15:45:30  
20 that would be internal deliberations. 15:45:32  
21 THE WITNESS: Okay. Thank you. 15:45:35  
22 A. So let me try to be as clear as I can, 15:45:37  
23 because my memory just is imperfect about this. So 15:45:40  
24 certainly, as I've already stated, there were 15:45:45  
25 people from the White House talking to people at 15:45:48

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1 DHS about TPS and about the termination of TPS. I 15:45:52  
2 want to be very careful about -- about stating 15:45:57  
3 unequivocally that those conversations spoke 15:46:03  
4 directly about the -- a new interpretation of the 15:46:07  
5 statute, because I'm trying to think if I -- if I 15:46:12  
6 heard that specifically or not. 15:46:16

7 So I'm just going to be very careful here. 15:46:20

8 And I don't remember specifically being told that. 15:46:25

9 Q. Okay. And you've mentioned in the course 15:46:27  
10 of the deposition a few different ways in which the 15:46:34  
11 White House had been involved in communications 15:46:39  
12 around TPS. I just want to be very clear, you said 15:46:41  
13 that there are people in the White House who were 15:46:47  
14 involved in conversations around the termination of 15:46:51  
15 TPS. Who are the people that you know of directly 15:46:53  
16 or indirectly from the White House who were 15:46:57  
17 involved in those conversations? 15:46:59

18 A. So the name that always came up is Stephen 15:47:03  
19 Miller. 15:47:08

20 Q. And who was Stephen Miller communicating 15:47:08  
21 with? 15:47:13

22 A. So, again, this is -- these are things 15:47:13  
23 that were told to me. I don't have any direct 15:47:17  
24 knowledge of these conversations. But he was 15:47:21  
25 certainly speaking to the DHS Chief of Staff and he 15:47:25

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1	was certainly speaking to Mr. Hamilton, and he may	15:47:32
2	have been speaking to others.	15:47:37
3	Q. How do you know that he was speaking to	15:47:39
4	the DHS Chief of Staff? First of all, which DHS	15:47:41
5	Chief of Staff are you referencing here?	15:47:46
6	A. Chad Wolf.	15:47:48
7	Q. And how do you know that he was speaking	15:47:49
8	to Chad Wolf?	15:47:52
9	A. Chad Wolf told me.	15:47:53
10	Q. Did he speak to Mr. Wolf more than once	15:47:55
11	about TPS?	15:47:58
12	MR. KIRSCHNER: Objection, foundation.	15:47:59
13	A. So I believe Mr. Wolf told me that he had	15:48:08
14	had numerous conversations with Stephen Miller	15:48:10
15	about TPS.	15:48:13
16	Q. Do you recall when those conversations	15:48:14
17	took place?	15:48:17
18	A. I don't.	15:48:18
19	Q. And how do you know that Mr. Miller was	15:48:20
20	having communications with Mr. Hamilton about TPS?	15:48:24
21	A. Again, I don't have direct knowledge of	15:48:28
22	these conversations, but reference would	15:48:30
23	occasionally be made to them in meetings.	15:48:34
24	Q. Did Mr. Wolfe elaborate to you the content	15:48:38
25	of the conversations he had with Mr. Miller	15:48:54

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1 concerning TPS?

15:48:57

2 MR. KIRSCHNER: So on this one, the way  
3 the question was asked, you can answer yes or no,  
4 but to the extent the question is about what the  
5 content is, I would instruct you not to answer.

15:48:58

15:49:01

15:49:03

15:49:06

6 THE WITNESS: Thank you. Sorry. Restate.

15:49:09

7 Q. Did Mr. Wolf relate to you the content of  
8 his communications with Mr. Miller related to TPS  
9 generally or specifically?

15:49:12

15:49:18

15:49:25

10 A. Only in the most general terms, not any  
11 specific detail.

15:49:26

15:49:30

12 Q. And were you aware generally or  
13 specifically the content of the communications  
14 between Mr. Miller and Mr. Hamilton concerning TPS?

15:49:33

15:49:35

15 A. No.

15:49:39

16 Q. Okay. And did you know the timing -- did  
17 you know how often or how many times Mr. Miller  
18 communicated with Mr. Hamilton related to TPS?

15:49:39

15:49:45

15:49:48

19 A. No.

15:49:51

20 Q. And do you know the timing of when  
21 Mr. Miller communicated with Mr. Hamilton related  
22 to TPS?

15:49:51

15:49:55

15:49:59

23 A. No.

15:50:00

24 Q. Do you know whether there was anything in  
25 writing from Mr. Miller related to the -- related

15:50:00

15:50:02

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1	to TPS?	15:50:06
2	A. No.	15:50:07
3	Q. And just to be very clear, this includes,	15:50:07
4	you know, more than just a memo, but e-mails, any	15:50:11
5	written communications, notes of any sort?	15:50:15
6	A. No, I don't know.	15:50:17
7	Q. Okay. What was your intention in writing	15:50:19
8	the op-ed here?	15:50:30
9	A. I disagreed with the decision and I	15:50:34
10	thought it was important to get another set of	15:50:44
11	arguments out there, especially the argument	15:50:49
12	related to the fairness issue of sending people	15:50:53
13	back who had been living in the United States	15:51:01
14	legally for 20 years, paying taxes, et cetera, et	15:51:04
15	cetera.	15:51:08
16	And I should add, because it was important	15:51:16
17	to me, I also thought it was important, as I argued	15:51:18
18	in my memo, that people understand that by sending	15:51:23
19	people back to Central America, sending large	15:51:29
20	numbers of repatriated people back to Central	15:51:32
21	America, we would actually be working against	15:51:36
22	ourselves, working against our own efforts to get	15:51:38
23	at the push factors of migration that drive people	15:51:41
24	to the United States.	15:51:44
25	So I considered it not in the American	15:51:44

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1 interest to send those people back.

15:51:47

2 MS. MacLEAN: Can we take just two minutes  
3 so that I can just try to figure out what we have  
4 left and try to cover it and let you get home  
5 hopefully in time for dinner.

15:52:06

15:52:08

15:52:11

15:52:13

6 THE VIDEOGRAPHER: Time is 3:52. We are  
7 off the record.

15:52:15

15:52:18

8 (Proceedings interrupted at 3:52 p.m. and  
9 reconvened at 4:07 p.m.)

15:52:19

15:52:20

10 THE VIDEOGRAPHER: Time is 4:07. We're  
11 back on the record.

16:07:06

16:07:16

12 BY MS. MacLEAN:

16:07:17

13 Q. So Ambassador Nealon, just one additional  
14 question about the conversation that we had  
15 previously. Are you aware of any documents that  
16 exist within the Department of Homeland Security  
17 concerning the interpretation of the TPS statute?

16:07:18

16:07:20

16:07:21

16:07:25

16:07:28

18 A. No.

16:07:31

19 Q. Okay. And now we just have a -- a few  
20 documents related to various meetings that related  
21 to TPS, and to the extent that you know, I would  
22 like your -- your input on those. We can try to  
23 run through them relatively quickly.

16:07:31

16:07:37

16:07:40

16:07:43

16:07:48

24 (Exhibit 42, DHS\_RFPD\_00000953 - 954,  
25 marked for identification.)

16:07:55

16:07:56

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1	Q. So this will be marked as Exhibit 42.	16:07:57
2	A. Thank you.	16:08:02
3	MS. MacLEAN: And we recognize that this,	16:08:08
4	I believe, is governed by the protective order	16:08:11
5	under discussion, and we will redact the e-mail	16:08:15
6	addresses of the people who are listed here prior	16:08:20
7	to any further dissemination of the exhibit.	16:08:25
8	MR. KIRSCHNER: To the extent there are	16:08:30
9	any phone numbers, we would ask for you to do the	16:08:31
10	same, which I believe there is on page 2.	16:08:34
11	Q. So Ambassador Nealon, this appears to be a	16:08:44
12	meeting that took place just before you arrived at	16:08:49
13	DHS, a couple of months before you arrived at DHS.	16:08:56
14	Is this a -- a meeting that you have any	16:08:59
15	familiarity with?	16:09:01
16	A. No.	16:09:02
17	Q. Can you identify who the people are who	16:09:03
18	are included in that TPS briefing in the e-mail	16:09:11
19	chain?	16:09:16
20	MR. KIRSCHNER: Just a matter of	16:09:17
21	clarification, can Counsel kind of point Ambassador	16:09:19
22	Nealon to where you're referring to? Are you	16:09:24
23	referring to the "to" line or the attendees --	16:09:27
24	MS. MacLean: Actually, that's helpful.	16:09:30
25	Q. Actually, I'm going to skip the question	16:09:31

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1	that I asked and go to the attendees of the	16:09:33
2	meeting, which is in the notes block in the -- in	16:09:36
3	the actual e-mail. I think you had previously	16:09:39
4	identified some of these people.	16:09:43
5	Can you identify who Ms. Neumann is?	16:09:49
6	A. Yes, she was the Deputy Chief of Staff.	16:09:50
7	Now, I have to caveat this, this is, as	16:09:54
8	you say, two months before I came on board at DHS,	16:10:03
9	so I know almost all these people. I'm not certain	16:10:06
10	they had the same positions before I got there that	16:10:10
11	they had when I got there. But when I got there,	16:10:12
12	Elizabeth Neumann was the Deputy Chief of Staff.	16:10:14
13	Q. And Mr. Rezmovic, R-e-z-m-o-v-i-c?	16:10:18
14	A. I believe Mr. Rezmovic was a -- either a	16:10:20
15	counsellor to the Secretary or to the Deputy	16:10:26
16	Secretary, I don't recall.	16:10:29
17	Q. Do you know what Mr. Rezmovic's role was	16:10:31
18	with regard to TPS?	16:10:35
19	A. I don't.	16:10:36
20	Q. Mr. Cassidy?	16:10:41
21	A. Mr. Cassidy was the head of the Office of	16:10:42
22	Legislative Affairs.	16:10:46
23	Q. And what was the role of the Office of	16:10:46
24	Legislative Affairs in -- in connection with TPS	16:10:52
25	determinations?	16:10:55

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1 A. The Office of Legislative Affairs, their 16:11:00  
2 role was to maintain contact with members of 16:11:03  
3 Congress and staffers about decisions related to 16:11:06  
4 TPS. 16:11:09

5 Q. During your time at DHS, was Ben Cassidy 16:11:09  
6 the person who primarily performed this function? 16:11:12

7 A. Yes. 16:11:16

8 Q. Is that in connection with TPS or more 16:11:16  
9 broadly? 16:11:20

10 A. He was the head of the office. He was the 16:11:20  
11 head of the Office of Legislative Affairs. 16:11:25

12 Q. I think we covered everyone else on that 16:11:28  
13 list. We can move on from that document. 16:11:31

14 MS. MacLEAN: So mark this as Exhibit 43, 16:11:57  
15 which is a document that is marked "Temporary 16:12:02  
16 Protected Status Briefing, May 19th, 2017," 16:12:08  
17 apparently related to the same meeting. 16:12:10

18 (Exhibit 43, DHS-RFPD-00000986, marked for 16:12:13  
19 identification.) 16:12:14

20 Q. I'm not going to ask you to review the 16:12:14  
21 entirety of the document, particularly since you 16:12:17  
22 were not at the meeting or at DHS at the time. But 16:12:18  
23 if you could turn to the second page, there's a 16:12:21  
24 list of participants at the meeting. 16:12:25

25 The only person that you had not 16:12:29

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1 identified in the previous list who is currently on 16:12:31  
2 this list is Arex Avanni. I don't know if that's 16:12:34  
3 Mr. Avanni or Ms. Avanni. 16:12:38  
  
4 A. Mr. 16:12:38  
  
5 Q. Mr. Avanni. 16:12:38  
  
6 Are you aware -- I think you had 16:12:41  
7 previously identified that Mr. Avanni was a 16:12:42  
8 counsellor to the Deputy Secretary? 16:12:44  
  
9 A. That's correct. 16:12:46  
  
10 Q. And do you know what Mr. Avanni's role was 16:12:46  
11 with regard to TPS? 16:12:50  
  
12 A. I don't, no. 16:12:52  
  
13 MR. KIRSCHNER: Counsel, I again would ask 16:13:04  
14 if you're introducing this exhibit, to redact the 16:13:06  
15 phone numbers on page 2. 16:13:09  
  
16 MS. MacLEAN: Yes. Thank you. 16:13:11  
  
17 We're also able to do that prior to it 16:13:27  
18 being introduced as part of the transcript, if 16:13:30  
19 that's possible. We'll coordinate with the court 16:13:32  
20 reporter about that afterwards. 16:13:34  
  
21 Q. Sorry, the last -- before we move on from 16:13:36  
22 that exhibit, the last two people I want to mention 16:13:38  
23 are listed in the Staff Responsible for Briefing 16:13:40  
24 memo, which is the second to last section in bold. 16:13:42  
  
25 There are two people listed, Brandon 16:13:48

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1 Prelogar and Katherine Anderson. Did you know 16:13:51  
2 Mr. Prelogar and Ms. Anderson during your time at 16:13:57  
3 DHS? 16:14:01  
4 A. I didn't. 16:14:01  
5 MS. MacLEAN: Move on from that. 16:14:04  
6 (Exhibit 44, USCIS\_RFPD\_00000055 - 58, 16:14:25  
7 marked for identification.) 16:14:26  
8 Q. So Exhibit 44 is an e-mail exchange 16:14:32  
9 concerning an immigration update briefing. I'll 16:14:40  
10 let you skim through that. 16:14:46  
11 So this was an e-mail exchange that 16:15:13  
12 occurred after you arrived at the Department of 16:15:18  
13 Homeland Security. The subject matter of the 16:15:22  
14 e-mail, the first e-mail that is listed on the page 16:15:27  
15 is "AS1BB 08.04.17 Immigration Update Briefing." 16:15:32  
16 Do you know what AS1BB means? 16:15:40  
17 A. AS1 refers to the Acting Secretary. I 16:15:45  
18 don't know what BB means. 16:15:49  
19 Q. Okay. And do you know who -- who Carl 16:15:50  
20 Risch, R-i-s-c-h, is who is in the cc of the 16:15:55  
21 e-mail? 16:16:00  
22 A. Yes. Carl eventually became the Assistant 16:16:07  
23 Secretary of State for Consular Affairs. Whether 16:16:12  
24 he -- I assume he was at that time and that's why 16:16:14  
25 he's being copied, but I don't know that for sure. 16:16:16

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1	I knew him as the Assistant Secretary of	16:16:19
2	State for Consular Affairs, but I'm not certain	16:16:22
3	that he was in that job by August 3rd.	16:16:26
4	Q. Okay. And the two attachments that are	16:16:28
5	identified here are "ASBB Immigration Update	16:16:30
6	Briefing" and "TPS.RADOPS." Does TPS.RADOPS mean	16:16:30
7	anything to you?	16:16:40
8	A. I'm sorry. Where do you see that?	16:16:40
9	Q. It's one of the attachments that is	16:16:42
10	identified above the first line.	16:16:44
11	A. Oh. That doesn't mean anything to me.	16:16:52
12	Q. Okay. Do you know off the top of your	16:16:54
13	head, you know, without having a thorough review of	16:16:59
14	this e-mail exchange, what this immigration update	16:17:02
15	briefing was regarding?	16:17:05
16	A. I don't. I haven't read through the	16:17:06
17	entire chain.	16:17:11
18	Q. So I may ask you a couple more questions	16:17:14
19	about this --	16:17:17
20	A. Sure.	16:17:17
21	Q. -- because it appears from the e-mail	16:17:18
22	chain that your office had significant involvement	16:17:20
23	in this. So why don't you take a -- take a couple	16:17:22
24	of minutes to review that.	16:17:26
25	A. Okay.	16:17:28

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1	Okay.	16:18:26
2	Q. Do you know what this is referring to,	16:18:26
3	having reviewed it more closely?	16:18:28
4	A. It appears to be -- it's a USCIS internal	16:18:30
5	document, getting USCIS prepared for a briefing for	16:18:37
6	the Acting Secretary on it looks like current state	16:18:43
7	of play, upcoming decision points on TPS.	16:18:49
8	So looks like a briefing for the Acting	16:18:52
9	Secretary on where -- where the Department stands	16:18:57
10	on TPS.	16:18:59
11	Q. Would DHS policy -- would the DHS Office	16:19:00
12	of Policy have been responsible for organizing that	16:19:05
13	meeting?	16:19:07
14	A. So --	16:19:11
15	MR. KIRSCHNER: Objection to the extent	16:19:11
16	this is calling for speculation.	16:19:12
17	A. So in reading through this, it looks like	16:19:15
18	the Office of Policy was responsible for	16:19:20
19	coordinating the meeting.	16:19:25
20	Q. Do you recall being present at that	16:19:26
21	meeting?	16:19:28
22	A. No.	16:19:28
23	MR. KIRSCHNER: Object to form.	16:19:29
24	Q. That's fine.	16:19:29
25	(Exhibit 45, E-mail from Briana Petyo to	16:20:02

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1	Kelbi Culwell, 10/10/17, marked for identification.)	16:20:11
2	Q. We've just entered Exhibit 45, which is	16:20:11
3	another e-mail chain which appears to be about the	16:20:18
4	same meeting.	16:20:22
5	MR. KIRSCHNER: Objection, counsel is	16:20:22
6	testifying.	16:20:24
7	MS. MacLEAN: And incorrectly, I think. I	16:20:27
8	think this is actually a different date of the	16:20:30
9	meeting. The previous meeting took place as	16:20:33
10	identified here or was -- there's an immigration	16:20:35
11	update briefing in the previous exhibit, 44,	16:20:38
12	August 4th, 2017, and in Exhibit 45, we have a	16:20:42
13	reference to AS1BB TPS meeting on October 10th,	16:20:49
14	2017.	16:20:56
15	A. Okay.	16:21:20
16	Q. Do you know what this chain is referring	16:21:21
17	to?	16:21:23
18	A. This looks like a chain very similar to	16:21:23
19	the previous one in which preparations are being	16:21:27
20	made to brief the Acting Secretary on state of play	16:21:32
21	regarding TPS.	16:21:36
22	Q. Can you let me know who the people are who	16:21:39
23	we have not discussed who are in the "to" column on	16:21:43
24	the first page of this exhibit? We obviously know	16:21:46
25	who Ms. Petyo is.	16:21:49

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1 Kelbi Culwell, to the extent that you  
2 know?

3           A. I don't know. But by reading through  
4 this, this looks like interplay between the  
5 Executive Secretariat, who are responsible for the  
6 Secretary's paper, and I see my Chief of Staff on  
7 here, Ms. Petyo. So it looks like back and forth  
8 among people talking about the materials needed for  
9 the -- for the meeting.

10 Q. Okay. So if we go to the second page of  
11 this document, the middle e-mail is from Juliana  
12 Blackwell. Who is Juliana Blackwell?

13           A. I believe Joanna Blackwell (sic) worked in  
14       the office of the Executive Secretary, which is the  
15       office that handles the Secretary's paper -- the  
16       Department's paper.

17 Q. From your review of this e-mail chain,  
18 would you identify that the DHS Office of Policy  
19 was also coordinating this meeting?

20 MR. KIRSCHNER: Objection, calls for  
21 speculation.

22 A. You know, I'd have to read through it to  
23 see if I could determine who was the responsible  
24 officer --

25 Q. Don't worry about it. It's not a critical

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1	question.	16:23:23
2	In the e-mail on that second page from	16:23:23
3	Ms. Blackwell, she says, "Looping in USCIS,	16:23:27
4	additional guidance from the COS," what would COS	16:23:31
5	refer to there?	16:23:33
6	A. That would be the Chief of Staff, the	16:23:34
7	Secretary's Chief of Staff.	16:23:38
8	Q. And she says, "The decision" -- "The	16:23:39
9	discussion needs to be on each individual country	16:23:40
10	under consideration, specifically need a deep dive	16:23:43
11	into the conditions of that respective country to	16:23:46
12	determine if they meet" -- "if they continue to	16:23:49
13	meet the statutory categories for TPS."	16:23:50
14	This follows on an e-mail from	16:23:53
15	Ms. Blackwell, where she says -- but she has --	16:23:55
16	well, "And the briefing memo is okay in terms of	16:24:01
17	serving as an introduction, but she has decisions	16:24:04
18	to make in the next three weeks about Honduras and	16:24:08
19	Nicaragua. This briefing session needs to focus on	16:24:09
20	those decisions and it's my understanding that	16:24:12
21	USCIS would like for El Salvador to be considered	16:24:16
22	also even though that decision doesn't need to be	16:24:16
23	made for a couple of months."	16:24:20
24	Do you recall communication recognizing	16:24:28
25	the need to include El Salvador in this series of	16:24:32

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1	decisions?	16:24:35
2	MR. KIRSCHNER: Objection,	16:24:35
3	mischaracterizes the e-mail. The e-mail goes on	16:24:36
4	and discusses other matters as well, talks about	16:24:38
5	Haiti. I just would ask for -- objection,	16:24:41
6	mischaracterizes the e-mail.	16:24:51
7	A. Yeah, so again, this -- this is a back and	16:24:52
8	forth among people who are trying to make sure that	16:24:56
9	the paperwork gets put together for the meeting.	16:25:02
10	And then there's a reference to, as you described,	16:25:07
11	you know, have to consider each country	16:25:13
12	individually and do a deep dive, so that's	16:25:17
13	apparently sharing guidance they got from the Chief	16:25:20
14	of Staff.	16:25:23
15	So this is the kind of churn that takes	16:25:24
16	place before every meeting that the Secretary has	16:25:29
17	to ensure that the meeting is productive, to ensure	16:25:33
18	that the right people are at the meeting, to ensure	16:25:37
19	there's an agenda, to ensure that the right	16:25:39
20	paperwork has been provided.	16:25:42
21	So it's -- it's usually not a level of	16:25:44
22	detail that I would have gotten involved in unless	16:25:46
23	-- unless I had to, unless I was trying to shape	16:25:49
24	the meeting in a certain way or something like	16:25:51
25	that.	16:25:54

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1	Q. Very fortunate.	16:25:56
2	MS. MacLEAN: I think we can do this one	16:26:53
3	quickly, too. This is Exhibit 46.	16:26:56
4	(Exhibit 46, DHS-001-000515 - 521, marked	16:26:58
5	for identification.)	16:26:58
6	Q. So what is marked as Exhibit 46 is -- says	16:26:58
7	in this chain, "PLCY led" -- "PLCY led," which	16:27:13
8	based on previous conversations I assume to mean is	16:27:13
9	the DHS Office of Policy led meeting; is that	16:27:16
10	correct?	16:27:16
11	A. Correct.	16:27:16
12	Q. "AS1BB 11.13.17 TPS Strategy Meeting,"	16:27:17
13	you again see AS1BB, we're not sure what BB means,	16:27:17
14	but it appears to be one month following the	16:27:17
15	previous meeting.	16:27:17
16	Do you recall being at this meeting, off	16:27:33
17	the top of your head? Probably a difficult	16:27:36
18	question.	16:27:37
19	A. So let me read through this very quickly,	16:27:38
20	if you don't mind.	16:27:43
21	So it's hard for me to recall that I was	16:28:05
22	at a specific meeting. I see my name on the list	16:28:08
23	of proposed attendees, so it's likely that if I was	16:28:11
24	in the country, that I was there. But, you know, I	16:28:16
25	don't recall this specific meeting.	16:28:18

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1	Q. And if we go to the list of attendees,	16:28:19
2	which is on page 3 of 7, the only -- well, there's	16:28:24
3	-- the only person who is not an OGC, Office of	16:28:34
4	General Counsel participant who we did not discuss	16:28:42
5	who's -- from previous communications is Tom Homan.	16:28:44
6	Who is Mr. Homan?	16:28:46
7	A. Mr. Homan was the Acting Director of ICE.	16:28:48
8	Q. And was ICE present more than at this	16:28:52
9	meeting in meetings related to TPS?	16:28:57
10	A. My recollection is that they were often	16:29:00
11	present, but not always present.	16:29:03
12	Q. And what was the role of ICE in	16:29:05
13	conversations related to TPS?	16:29:09
14	MR. KIRSCHNER: Objection, vague.	16:29:13
15	A. So my assumption is that ICE would be	16:29:17
16	invited to meetings about TPS because among many	16:29:25
17	other things, ICE is responsible for interior	16:29:30
18	enforcement in the United States.	16:29:34
19	So if -- if TPS beneficiaries lost that	16:29:36
20	benefit and were subject to deportation, ICE would	16:29:47
21	play the lead role in -- in executing deportations.	16:29:52
22	So they had obviously a big stake in TPS.	16:29:57
23	Q. Did ICE, either Mr. Homan or another -- or	16:30:03
24	a surrogate or another representative of ICE	16:30:12
25	express any position with regard to whether TPS	16:30:15

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1 should be extended or terminated in any of the  
2 meetings that you were present at?

16:30:19

3 MR. KIRSCHNER: I just want to make clear,  
4 I'm going to instruct you that you can answer the  
5 question as asked, but if there are follow-up  
6 questions about the content, depending on how it  
7 was asked, I may instruct you not to answer.

16:30:21

16:30:23

16:30:25

16:30:28

16:30:31

16:30:35

8 THE WITNESS: Okay.

16:30:38

9 MR. KIRSCHNER: But I understand the  
10 question is just whether ICE expressed a view, not  
11 the content.

16:30:39

16:30:40

16:30:46

12 A. At least at some of the meetings at which  
13 I was present, ICE did express a view.

16:30:47

16:30:49

14 Q. Without intruding on the deliberative  
15 process privilege at this stage while this question  
16 is still under review by the court, was there a  
17 basis for ICE's view, not the content of it, but  
18 was it, to the extent that you can answer, based on  
19 particular equities or interests that ICE was  
20 representing in these meetings?

16:30:53

16:31:07

16:31:09

16:31:15

16:31:19

16:31:24

16:31:28

21 MR. KIRSCHNER: Again, I would instruct  
22 you not to answer to the extent it reveals internal  
23 deliberations. To the extent you could provide a  
24 general answer about ICE's equities, and without  
25 revealing internal deliberations, then that is

16:31:30

16:31:32

16:31:38

16:31:41

16:31:44

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1 fine, but to the extent it is revealing internal  
2 deliberations, I would instruct you not to answer.

16:31:44

3 A. So as I said previously, one of ICE's main  
4 duties is what we call interior enforcement, that  
5 is, repatriating people who are in the United  
6 States with no legal status back to their countries  
7 of origin.

16:31:47

16:31:49

16:31:57

16:32:03

16:32:09

16:32:12

8 So if -- if TPS were going to be  
9 terminated for countries that had significant TPS  
10 populations in the United States, this would have a  
11 big impact, a big workforce and mission impact on  
12 ICE. So they had significant equities related to  
13 the extension or termination of TPS.

16:32:22

16:32:24

16:32:27

16:32:30

16:32:35

16:32:38

14 Q. Thank you.

16:32:48

15 (Exhibit 47, E-mail dated July 14, 2017  
16 from James McCament to Tracy Renaud, marked for  
17 identification.)

16:32:50

16:32:53

16:32:53

18 Q. So I'm marking another e-mail as  
19 Exhibit 47. It might be easier if you want to  
20 review this e-mail to start -- sorry -- I am  
21 wrong -- the earliest e-mail is the first one in  
22 the chain.

16:32:58

16:33:00

16:33:22

16:33:26

16:33:29

23 A. Okay.

16:33:30

24 MR. KIRSCHNER: I just want to say that  
25 that's -- that is counsel's interpretation. There

16:33:31

16:33:37

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1 are some times when dates on e-mails might have 16:33:41  
2 different time zones, so I'm not -- without having 16:33:43  
3 the opportunity to read the e-mail in detail to 16:33:47  
4 know for sure which e-mail is first. I'm sure by 16:33:50  
5 context one can figure it out. I just have seen 16:33:53  
6 documents within the government before where the 16:33:58  
7 timestamps are different based on time zones or 16:34:00  
8 based on -- 16:34:03

9 MS. MacLEAN: Fair enough. 16:34:04

10 A. So I believe the second e-mail is the 16:34:45  
11 first e-mail. 16:34:47

12 Q. You're right, actually, because it is a 16:34:50  
13 reply. It says "re VTEL with S1." 16:34:53

14 So this e-mail concerns more, obviously, 16:35:08  
15 than just TPS. But the subject matter of the first 16:35:12  
16 e-mail, which is the second in the chain is "VTEL 16:35:17  
17 with S1." Is it fair to state that that is a 16:35:20  
18 report back of a telephone call with the Secretary? 16:35:26

19 MR. KIRSCHNER: Objection, calls for 16:35:30  
20 speculation. 16:35:37

21 A. Yeah. I don't know the term "VTEL," I 16:35:37  
22 don't know if it's a phone call or video 16:35:41  
23 conference. I don't know what that term means. 16:35:45

24 Q. And July 14, 2017, I understand that you 16:35:46  
25 have just arrived at the Department at that time; 16:35:50

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1	is that correct?	16:35:53
2	A. So I may have actually still been in the	16:35:53
3	little orientation program. But I arrived in the	16:35:56
4	building to work right about that time.	16:35:59
5	Q. Okay. And the Secretary at that time was	16:36:02
6	General Kelly?	16:36:06
7	A. Yes.	16:36:07
8	Q. So if we go down to, I think, the	16:36:07
9	beginning of the conversation around TPS, the	16:36:15
10	e-mail states, "After finishing the rounds, he said	16:36:20
11	two things that do pertain to us: one, TPS Haiti."	16:36:23
12	Do you see where I'm pointing to?	16:36:28
13	A. Are you after number one?	16:36:30
14	Q. Number one, yes.	16:36:33
15	A. Okay.	16:36:34
16	Q. "He reiterated his prior ask of the	16:36:35
17	Haitian government to work with those who have TPS	16:36:37
18	to prepare them for travel in order to return to	16:36:40
19	Haiti, and he wants to know if they are doing	16:36:43
20	that."	16:36:46
21	What do you think that is referring to?	16:36:46
22	MR. KIRSCHNER: Objection, speculation.	16:36:51
23	A. So General Kelly was -- had had direct	16:36:53
24	conversations with the Haitians about TPS in which	16:37:08
25	he had told them that they needed to begin to	16:37:15

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1 prepare to take their citizens back. And so they 16:37:19  
2 needed to begin to prepare to issue travel 16:37:25  
3 documents to them, and they needed to begin to 16:37:29  
4 prepare how they were going to receive their 16:37:34  
5 repatriated citizens when they arrived back in 16:37:37  
6 Haiti. So he is asking here for an update on how 16:37:41  
7 they are doing on that. 16:37:45

8 Q. Was it your understanding, then, that 16:37:47  
9 there had been a decision already made to terminate 16:37:50  
10 TPS after this brief six-month extension? 16:37:54

11 A. So that six-month extension predated my 16:37:58  
12 arrival at DHS, but I had the feeling from my 16:38:07  
13 conversations with Kelly that he was probably going 16:38:15  
14 to terminate. 16:38:22

15 Q. And from what you had recounted about the 16:38:25  
16 communications between General Kelly and the 16:38:34  
17 Haitian government, it sounds as if, and correct me 16:38:39  
18 if I'm wrong, that that feeling or sense or 16:38:44  
19 expectation was also communicated to the Haitian 16:38:50  
20 government that TPS was likely to be terminated? 16:38:54

21 A. So, again, that predated my arrival at 16:38:57  
22 DHS, so I don't know what that communication was, 16:39:04  
23 precisely. 16:39:06

24 Q. Okay. So later on in that same paragraph, 16:39:11  
25 it states, "We got the data from, redacted, but 16:39:17

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1 that seems to be the entire universe since TPS  
2 began, not tied to specific time frames."

16:39:21  
16:39:25

3 Do you know if there was particular data  
4 around the time that you joined the Department that  
5 Secretary Kelly was looking for with regard to TPS?

16:39:28  
16:39:30  
16:39:34

6 MR. KIRSCHNER: Objection, foundation.

16:39:37

7 A. I'm sorry. Could you restate your  
8 question?

16:39:49  
16:39:51

9 Q. Yes. There's a sentence within that same  
10 paragraph that reads, "We got the data from,  
11 redacted, but that seems to be the entire universe  
12 since TPS began, not tied to specific time frames."

16:39:51  
16:39:53  
16:39:55  
16:39:58

13 Do you see that?

16:40:02

14 A. I do.

16:40:03

15 Q. Do you know if there was specific data  
16 that Secretary General Kelly was seeking with  
17 regard to TPS at the time that you joined the  
18 Department?

16:40:03  
16:40:06  
16:40:09  
16:40:13

19 A. Yes. He was interested in knowing if  
20 large numbers of Haitians were pursuing other  
21 avenues to be able to stay in the United States, if  
22 they were pursuing other ways to regularize their  
23 status so that they could stay.

16:40:13  
16:40:22  
16:40:25  
16:40:28  
16:40:31

24 Q. Do you know why he was interested in that  
25 information?

16:40:39  
16:40:41

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1 A. My impression from my conversations with 16:40:43  
2 General Kelly is that he was extremely sympathetic 16:40:46  
3 to the Haitians who were living in the United 16:40:49  
4 States. He was a lot less sympathetic to the 16:40:53  
5 Haitian government which he considered to be, I 16:40:57  
6 don't want to put words in his mouth, but which I 16:40:59  
7 believe he considered to be out of touch with their 16:41:02  
8 people. And so he was interested in knowing if 16:41:04  
9 large numbers of Haitians were going to be able to 16:41:10  
10 stay on in the United States by adjusting their 16:41:13  
11 status in some other way. 16:41:15

12 Q. Okay. Then the next line states, "S1" -- 16:41:17  
13 referring to then Secretary Kelly -- "stated firmly 16:41:23  
14 that the only people in the WH" -- is it fair to 16:41:26  
15 assume that that means White House? 16:41:31

16 A. Yes. 16:41:33

17 Q. -- "who can direct us to do anything are 16:41:33  
18 POTUS" -- is it fair to assume that's the president 16:41:36  
19 of the United States? 16:41:39

20 A. Yes. 16:41:39

21 Q. -- "and VP" -- is it fair to assume that 16:41:40  
22 that's vice president? 16:41:42

23 A. Yes. 16:41:44

24 Q. -- "while he has no issue with us having 16:41:46  
25 day to day working level discussions with WH staff, 16:41:48

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1 he does not want them directing us especially when  
2 it comes to decisions or changes of decisions by  
3 our professionals."

4 Were you aware of any concerns from then  
5 Secretary Kelly about direction that was coming  
6 from White House staff at that time?

7 A. In general, yes. This is something that  
8 General Kelly was passionate about. Being a  
9 military guy, he understood and believed deeply in  
10 the chain of command. So General Kelly believed  
11 that as a Cabinet Officer, he worked for the  
12 president. He didn't work for White House staff or  
13 staff at other agencies. So what he's -- what  
14 you're seeing here is Kelly saying that we don't --  
15 the Department of Homeland Security doesn't do  
16 things because staff has told us to do them,  
17 especially when something is a secretarial decision  
18 like TPS.

19 Q. So just one other question. If you go to  
20 the follow-up e-mail chain, the third paragraph,  
21 the follow-up e-mail in the chain, the third  
22 paragraph down reads, "Thanks for the quick recap  
23 on premium 2. I recognize when Gene is gone just  
24 how much the Secretary delegates and trusts all  
25 things immigration to him."

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1	Who is Gene in that sentence?	16:43:33
2	MR. KIRSCHNER: Objection, calls for	16:43:34
3	speculation.	16:43:41
4	A. I am speculating, but we can be rather	16:43:41
5	certain that he's referring to Gene Hamilton.	16:43:46
6	Q. Was it your understanding that then	16:43:50
7	Secretary Kelly deferred quite significantly on	16:43:52
8	immigration questions to Mr. Hamilton?	16:43:56
9	A. So, again, I only overlapped with General	16:43:59
10	Kelly for three weeks. I know that General Kelly	16:44:03
11	and Gene Hamilton had a very close and collegial	16:44:08
12	relationship.	16:44:17
13	MR. KIRSCHNER: Just trying to figure out	16:44:42
14	when is a good time for a very quick break.	16:44:44
15	MS. MacLEAN: We can take quick break if	16:44:48
16	you want. I think we're barrelling through --	16:44:50
17	MR. KIRSCHNER: I know that's -- I was	16:44:50
18	trying to think in terms in context of a break, not	16:44:52
19	in context of rushing you through.	16:44:55
20	MS. MacLEAN: We can actually take a break	16:44:58
21	if you need a break or --	16:45:00
22	MR. KIRSCHNER: Take a short break.	16:45:00
23	THE VIDEOGRAPHER: Time is 4:45. We're	16:45:02
24	off the record.	16:45:04
25	(Proceedings interrupted at 4:45 p.m. and	16:45:21

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1	reconvened at 4:49 p.m.)	16:48:49
2	THE VIDEOGRAPHER: Here time is 4:49.	16:48:51
3	We're back on the record.	16:49:08
4	(Exhibit 48, DHS-001-659-000660 - 662,	16:49:10
5	marked for identification.)	16:49:11
6	BY MS. MacLEAN:	16:49:12
7	Q. So I've marked as Exhibit 48 another	16:49:13
8	e-mail chain from November 8th, 2017. I wonder if	16:49:16
9	you could just look at it briefly and let me know	16:49:28
10	what it is referring to.	16:49:31
11	A. Okay.	16:49:33
12	Okay.	16:49:55
13	Q. Do you know what this is referring to?	16:49:55
14	A. Yes. This appears to refer to a letter	16:49:56
15	from the Haitian ambassador to the United States	16:50:02
16	regarding TPS, and there's a discussion of whether	16:50:07
17	or not this letter should be forwarded to the	16:50:10
18	Secretary and the answer is yes, it should be.	16:50:14
19	Q. Then I just wanted to ask you a couple of	16:50:17
20	questions regarding the TPS decision for Sudan.	16:50:28
21	(Exhibit 49, AR-SUDAN-00000028 - 39, marked	16:50:39
22	for identification.)	16:50:52
23	Q. So I'm marking as Exhibit 49 a document	16:50:52
24	that is called "Temporary Protected Status	16:50:56
25	Consideration, Sudan, August 7th, 2017."	16:50:59



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1 Q. I'll skip that.

16:52:49

2 Do you recall any concerns about whether  
3 the Secretary would make a timely decision with  
4 regard to the TPS determination of Sudan?

16:52:55

16:52:59

16:53:04

5 A. Yes, because as we've discussed  
6 previously, there was this -- there was this delay  
7 in getting the paperwork from the Department of  
8 State, which she really wanted to see before she  
9 made her decision.

16:53:08

16:53:17

16:53:25

16:53:28

16:53:31

10 Q. I'm going to give you what has previously  
11 been marked as Exhibit 7. This does seem to start  
12 at the end and go to the beginning.

16:54:13

16:54:15

16:54:25

13 A. Okay.

16:54:27

14 Okay.

16:55:31

15 Q. What do you understand this e-mail chain  
16 to be referring to?

16:55:31

16:55:33

17 MR. KIRSCHNER: Objection, calls for  
18 speculation.

16:55:34

16:55:39

19 A. This seems to be a back and forth about  
20 USCIS's input into the Sudan TPS decision.

16:55:39

16:55:47

21 Q. So if I -- the first e-mail in the chain  
22 from August 29th, 2017 at 9:52 p.m., the subject is  
23 "Sudan TPS" and the author is Gene Hamilton. It's  
24 obviously redacted in full.

16:55:53

16:56:01

16:56:08

16:56:16

25 The next e-mail is from Kathy Neubel

16:56:20

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1 Kovarik replying to that e-mail apparently  
2 15 minutes later, also entirely redacted.

16:56:27  
16:56:31

3 Following that, Mr. Hamilton one minute  
4 later says, "We need to repackage."

16:56:33  
16:56:40

5 Do you have any understanding of what that  
6 was related to and whether that was a concern from  
7 DHS or a concern from USCIS or something else  
8 entirely?

16:56:48  
16:56:51  
16:56:55  
16:57:00

9 MR. KIRSCHNER: So just Ambassador Nealon,  
10 the way the question was asked, I'm not instructing  
11 you not to answer to the extent that it later calls  
12 for the content of those discussions. I may  
13 instruct you not to answer, but I just want to draw  
14 the line of where -- of where I'm instructing you.

16:57:01  
16:57:07  
16:57:10  
16:57:13  
16:57:16  
16:57:18

15 THE WITNESS: Thank you.

16:57:24

16 A. So it's not clear to me because of the  
17 redactions what "repackage" means, so I don't know.

16:57:25  
16:57:31

18 Q. Okay. If we go to the next e-mail in the  
19 chain, I wonder if that helps provide some  
20 clarification. Christina McDonald, 20 minutes  
21 after Mr. Hamilton's communication, says, "Kathy,  
22 will you guys send an updated memo on Wednesday  
23 a.m.? We can then send it to ESEC and ask them to  
24 swap out the document."

16:57:36  
16:57:39  
16:57:42  
16:57:47  
16:57:51  
16:57:55  
16:57:59

25 Does that provide any clarification?

16:58:01

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1	A. It doesn't really, no.	16:58:03
2	Q. Okay. And then if we look further up the	16:58:05
3	chain, Christina McDonald, the end of the first	16:58:08
4	page, August 30th, 2017 at 11:36 a.m. and moving	16:58:15
5	onto the second page, she says, "I'm not trying to	16:58:22
6	be a pest again, but ESEC just checked in with me	16:58:25
7	and so I'm checking in with your folks, when do you	16:58:29
8	think USCIS will send the updated TPS Sudan/South	16:58:32
9	Sudan packages to OJC?"	16:58:32
10	Does that provide any clarification?	16:58:37
11	A. Again, it certainly doesn't provide any	16:58:42
12	clarification on what needed to be updated or	16:58:45
13	repackaged or anything, no.	16:58:48
14	Q. And then it says "PLCY" -- which we now	16:58:50
15	know is the department's Office of Policy --	16:58:56
16	"requires the updated memo so that they can clear	16:58:59
17	the memo and ESEC requires the DHS Office of	16:59:01
18	Policy's clearance before the package can move	16:59:06
19	forward."	16:59:08
20	Do you remember any communications	16:59:08
21	regarding the swapping out of a memo regarding TPS	16:59:10
22	for Sudan or South Sudan?	16:59:15
23	A. I don't.	16:59:22
24	MS. MacLEAN: I'm going to mark an exhibit	16:59:29
25	as Exhibit 50, though I would imagine this would be	16:59:31

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1	something that we would come back to if we do have	16:59:34
2	an opportunity to see this e-mail without	16:59:36
3	redactions.	16:59:38
4	(Exhibit 50, DHS_RFPD_00001071, marked for	16:59:39
5	identification.)	16:59:48
6	Q. So if you notice the previous e-mail chain	16:59:48
7	took place on August 29th and August 30th of 2017.	16:59:51
8	The e-mail that we're looking at now is from	16:59:55
9	August 29th of 2017. So in the same time frame.	16:59:59
10	Mr. Dougherty sends an e-mail to you that	17:00:04
11	is entirely redacted except for his	17:00:08
12	recommendations. And you reply "copy, thanks."	17:00:13
13	Do you have any recollection of what this	17:00:16
14	refers to?	17:00:18
15	A. No. But it could refer to the clearance	17:00:26
16	process that was mentioned in the previous e-mail.	17:00:31
17	But again, it's just not enough here to go on.	17:00:35
18	Q. Is it fair to say that there's not enough	17:00:39
19	here to go on because of the redactions?	17:00:41
20	MR. KIRSCHNER: Objection, argumentative.	17:00:44
21	Counsel is testifying.	17:00:47
22	A. So it's impossible to know without seeing	17:00:48
23	the redactions whether the redactions would make	17:00:53
24	things clear or not.	17:00:57
25	Q. Thank you.	17:01:14

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1           This is an exhibit that's previously           17:01:14  
2 marked as Exhibit 25, and this is an e-mail           17:01:19  
3 exchange from September 6th, 2017. I'm going to           17:01:30  
4 ask you to take a moment to review it and see if           17:01:39  
5 you can explain what it is referring to, to the           17:01:41  
6 extent that you know.           17:01:45

7           A. So I don't know precisely what it's           17:02:37  
8 referring to. It could be -- so after the           17:02:40  
9 Secretary signs a TPS decision, then there's a           17:02:48  
10 package that goes over to the Office of Management           17:02:56  
11 and Budget for the Federal Register Notice, so they           17:02:58  
12 could be referring to that package, but it's just           17:03:03  
13 not clear from the context, not clear to me from           17:03:07  
14 the context if that's precisely what they're           17:03:09  
15 referring to or not.           17:03:12

16           Q. Do you recall -- without more           17:03:23  
17 clarification on that, I'll move on from that           17:03:28  
18 document.           17:03:31

19           Do you recall that there had been a           17:03:31  
20 Federal Register Notice for Sudan that was           17:03:33  
21 published and then withdrawn?           17:03:36

22           A. Yes.           17:03:37

23           Q. Do you recall why it was published and           17:03:38  
24 withdrawn?           17:03:42

25           A. I don't recall specifically why it was           17:03:42

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1	published and then withdrawn, no.	17:03:44
2	Q. Do you recall what the original	17:03:48
3	recommendation from USCIS was with regard to TPS	17:04:11
4	for El Salvador, Honduras, and Nicaragua?	17:04:17
5	MR. KIRSCHNER: Objection.	17:04:24
6	Q. First of all --	17:04:24
7	MS. MacLEAN: Let me step back.	17:04:24
8	Q. Do you recall that there was an original	17:04:27
9	recommendation in October of 2017 from USCIS with	17:04:27
10	regard to El Salvador, Honduras, and Nicaragua?	17:04:32
11	MR. KIRSCHNER: Objection, foundation.	17:04:35
12	A. So are you suggesting that there was --	17:04:38
13	that there were two recommendations?	17:04:42
14	Q. So as we talked in the beginning about	17:04:45
15	what the process is for TPS decision-making,	17:04:47
16	there's something of a black box for you because	17:04:51
17	you were at DHS, a process that takes place within	17:04:54
18	USCIS, the USCIS director will sign off on a	17:04:58
19	decision memo that will then be transferred to DHS	17:05:01
20	and then there's a review process that takes place	17:05:04
21	within DHS. There was an initial decision memo	17:05:08
22	regarding certain Central American countries from	17:05:11
23	USCIS in October. Were you aware of that?	17:05:16
24	MR. KIRSCHNER: Objection, assuming facts	17:05:19
25	not in evidence. Counsel is testifying. Calls for	17:05:21

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1 speculation.

17:05:30

2 A. So I guess I'm still not completely clear  
3 what you're asking me. So are you suggesting that  
4 there was a -- that there were -- that there was a  
5 first memo that somehow got pulled back or whatever  
6 and then a second memo?

17:05:30

17:05:34

17:05:36

17:05:42

17:05:45

7 Q. I'm trying to understand what initially  
8 was produced by USCIS -- by the USCIS director with  
9 regard to the Central American countries before the  
10 final decision was made, at that point in November.  
11 Obviously there were different decisions that were  
12 made after that. You may not have familiarity with  
13 that or recollection.

17:05:46

17:05:49

17:05:53

17:05:56

17:06:01

17:06:03

17:06:06

14 A. Again, so if you're suggesting that there  
15 was a first memo and then that got pulled back and  
16 then there was a second memo, I don't recall.

17:06:08

17:06:12

17:06:17

17 Q. Okay. So I'm going to give you an exhibit  
18 that was previously marked as Exhibit 28. So you  
19 don't need to go through the whole thing, and  
20 actually most of it is redacted. But the first  
21 e-mail that is visible here is from Kathy Neubel  
22 Kovarik to Mr. Cissna and Mr. McKenna and someone  
23 whose name is redacted. It's entitled "TPS roll  
24 out coordination El Salvador, Guatemala, Haiti, and  
25 Honduras." And it is on October 16th of 2017. The

17:06:19

17:06:24

17:06:36

17:06:41

17:06:44

17:06:50

17:06:51

17:06:54

17:06:56

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1 e-mail states, "We can't wait for state to give us 17:07:03  
2 recommendations, or we'd wait until the last 17:07:06  
3 minute. The memos are nearly revised to take out 17:07:09  
4 DED and add info on their original designation." 17:07:13  
5 Do you know what "DED" refers to? 17:07:18  
6 MR. KIRSCHNER: Objection, calls for 17:07:19  
7 speculation. 17:07:26  
8 A. I don't know what DED stands for. 17:07:22  
9 Q. Did you ever hear any discussion with 17:07:25  
10 regard to DED in the context of TPS during your 17:07:33  
11 time at the Department? 17:07:35  
12 A. Not that I recall. 17:07:36  
13 Q. Skip one line or one sentence. The next 17:07:37  
14 sentence reads, "We'll need to ask DPC to 17:07:41  
15 coordinate some interagency comment period and then 17:07:44  
16 report that back to her along with any 17:07:48  
17 recommendation from Tillerson." 17:07:50  
18 Is it fair to say that "DPC" refers to the 17:07:52  
19 Domestic Policy Council at the White House? 17:07:55  
20 A. Yes. 17:07:58  
21 Q. Okay. Just a couple of questions with 17:08:04  
22 regard to the TPS determination for Honduras. 17:08:23  
23 MS. MacLEAN: Hold on one moment. 17:08:35  
24 Q. Were you aware of public reports of 17:08:43  
25 pressure from the White House concerning the TPS 17:08:49

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1 determination for Honduras? 17:08:52

2 Sorry. Let me just clarify. 17:09:00

3 A. Thank you. 17:09:02

4 Q. Were you aware of public reports of White 17:09:02  
5 House pressure to terminate TPS for Honduras during 17:09:05  
6 the first time that Honduras was under 17:09:09  
7 consideration in late October of 2017 and early 17:09:12  
8 November of 2017? 17:09:14

9 MR. KIRSCHNER: Objection, foundation, 17:09:15  
10 assumes facts not in evidence. 17:09:16

11 A. Um, again, it's very often difficult for 17:09:21  
12 me to separate things chronologically. Yes. 17:09:30

13 (Exhibit 51, The Washington Post article 17:09:42  
14 "White House chief of staff tried to pressure..., 17:09:43  
15 marked for identification.) 17:09:43

16 Q. I'm going to introduce Exhibit 51. 17:09:44

17 MR. KIRSCHNER: Can I have a copy? 17:09:50

18 MS. MacLEAN: Oh, sorry. 17:09:53

19 Q. An article in the Washington Post called 17:09:55  
20 "White House Chief of Staff tried to pressure 17:09:59  
21 Acting DHS Secretary" -- oh, this is the bad copy 17:10:01  
22 problem, too. 17:10:09

23 MS. MacLEAN: I'm going to withdraw that 17:10:13  
24 exhibit, because it's a bad copy and you can't 17:10:16  
25 actually read the end of it. 17:10:18

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1 Q. Aside from the public reports, were you  
2 aware of engagement from the White House on the TPS  
3 decision concerning Honduras in late October and  
4 early November of 2017?

5 MR. KIRSCHNER: Ambassador Nealon, I'm  
6 going to again qualify my instruction. You can  
7 talk about whether there was discussion with the  
8 White House between the White House and DHS about  
9 the Honduras TPS decision, but I would instruct you  
10 not to answer about the nature of those  
11 deliberations or the internal deliberations that  
12 were revealed within those communications.

13 THE WITNESS: Okay. Thank you.

14 A. Yes, as I've previously said, there were  
15 conversations between the White House and DHS  
16 regarding TPS.

17 Q. Were you aware of who was -- who from the  
18 White House was engaged in those conversations  
19 specifically with regard to the TPS decision for  
20 Honduras?

21 A. So I don't have recollections specific to  
22 the -- that I can link specifically to the  
23 Honduras, the first Honduras decision.

24 Q. I think we'll hold that line of questions  
25 until we can get a better version of that exhibit.

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1	Do you know whether or do you recall	17:12:08
2	whether there was a change in the effective	17:12:17
3	termination date for the termination of TPS for	17:12:22
4	Nicaragua? First of all --	17:12:27
5	MS. MacLEAN: Let me go back a step.	17:12:30
6	Q. Do you understand what I mean when I say	17:12:31
7	"effective termination date" in the context of TPS?	17:12:35
8	A. I believe so, but why don't you tell me	17:12:38
9	what you mean.	17:12:41
10	Q. Well, why don't you tell me what you	17:12:42
11	understand that I mean.	17:12:43
12	A. Talking about "effective date," do you	17:12:44
13	mean the date at which it will actually terminate?	17:12:46
14	Q. Yes.	17:12:48
15	A. Yes.	17:12:49
16	Q. And do you recall that various of the	17:12:50
17	memos and recommendations with regard to TPS and	17:12:54
18	the possible termination of TPS considered whether	17:12:58
19	there should be an effective date of termination of	17:13:00
20	six months or 12 months or 18 months?	17:13:12
21	A. So I remember those discussions took place	17:13:06
22	surrounding all of the TPS decisions.	17:13:09
23	Q. And do you recall what the recommendations	17:13:13
24	were with regard to TPS -- the TPS termination for	17:13:15
25	Nicaragua?	17:13:21

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1 MR. KIRSCHNER: Objection, vague. You  
2 said those recommendations.

3 A. So I don't recall who within DHS was  
4 making specific recommendations for six months or  
5 12 months or 18 months of effective termination,  
6 no, I don't recall.

7 (Exhibit 52, DHS-001-659-000856 - 860,  
8 marked for identification.)

9 Q. We've marked as Exhibit 52 an e-mail  
10 chain. I'll give you a moment to look at that.

11 MR. KIRSCHNER: I have only page 1 of 3.  
12 I'm a little confused about the exhibit.

13 Q. So I'll ask you whether these belong  
14 together, to the extent that you know. There's a  
15 series of e-mails --

16 MR. KIRSCHNER: I would ask, just because  
17 of what was given to me --

18 MS. MacLEAN: Are they different?

19 MR. KIRSCHNER: Yeah, there's different  
20 content in different documents, different pages. I  
21 don't know what you --

22 MS. MacLEAN: Let me just try to explain.  
23 There are three e-mails, each is marked page 1 of  
24 3. I'm going to ask Mr. Nealon if they belong  
25 together or if they should be different content.

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1	The first one starts with "Need to discuss	17:16:14
2	this," the second one starts with "When she says	17:16:16
3	strategy," and the third one starts with "Okay, I	17:16:19
4	have an idea hatching."	17:16:22
5	And all three of these e-mails have the	17:16:28
6	same or nearly the same subject line and are in the	17:16:30
7	same time frame. The subject line is "TPS Upcoming	17:16:36
8	Decisions and Deadlines," and the date of all three	17:16:42
9	of these e-mails is September 18th, 2017.	17:16:44
10	Q. Do you know what these e-mails are related	17:16:51
11	to?	17:16:54
12	A. I mean, without seeing the attachment or	17:16:54
13	whatever it is that we don't have, it's very	17:16:58
14	difficult to know what this is about, what it is	17:17:02
15	specifically we're discussing.	17:17:10
16	Q. So just see if this refreshes your	17:17:24
17	recollection. The Department or USCIS issued a	17:17:32
18	press release on September 18th, 2017, announcing	17:17:39
19	the termination of TPS for Sudan.	17:17:42
20	Does that refresh your recollection?	17:17:45
21	A. Not really, because if the decision was	17:17:50
22	already made and a press release has been issued,	17:17:57
23	I'm not sure what we would need to discuss with	17:18:01
24	USCIS about it. So there are no real clues here	17:18:04
25	about what we're talking about, unfortunately.	17:18:10

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1	Q. Okay.	17:18:14
2	MS. MacLEAN: We'll move on from this.	17:18:18
3	Q. Now we are approaching the end.	17:18:58
4	A. Great.	17:19:02
5	Q. Apologize and I'm grateful for your	17:19:03
6	patience.	17:19:03
7	So I just want to -- I think I've asked	17:19:03
8	you about a number of the people within the	17:19:05
9	Department or USCIS, but I just want to ask you	17:19:07
10	perhaps about a couple more that I might have left	17:19:11
11	out.	17:19:15
12	Did you previously identify the role of	17:19:16
13	Miles Taylor?	17:19:23
14	A. Miles Taylor was one of the -- during my	17:19:25
15	time there, he was one of the counsellors to the	17:19:30
16	Secretary.	17:19:33
17	Q. And was he, to your knowledge, regularly	17:19:34
18	involved in TPS determinations?	17:19:38
19	A. So he was focused mostly on relations with	17:19:40
20	international partners and counterterrorism issues.	17:19:48
21	Q. Did that bring him into the realm of TPS	17:19:54
22	or not so much?	17:19:57
23	A. Not specifically. As I said previously,	17:19:58
24	oftentimes, the counsellors would be where the	17:20:03
25	Secretary was. So he could have been in meetings	17:20:06

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1	where TPS was discussed, but it wasn't an area	17:20:10
2	where he had the lead among the counsellors.	17:20:14
3	Q. Who would you say was the person who had	17:20:17
4	the lead amongst the counselors?	17:20:19
5	A. Gene Hamilton.	17:20:21
6	MR. KIRSCHNER: Object. Objection, asked	17:20:22
7	and answered.	17:20:25
8	A. I'm sorry.	17:20:25
9	Q. And then Eric Jones, I think you had	17:20:26
10	previously identified him as the military advisor	17:20:29
11	to the DHS Secretary. Did you understand that he	17:20:31
12	had a regular role with regard to TPS	17:20:34
13	determinations?	17:20:35
14	MR. KIRSCHNER: Objection, assuming facts	17:20:35
15	not in evidence.	17:20:38
16	A. So Eric Jones is a Coast Guard Admiral,	17:20:39
17	and he was during my time there the military	17:20:43
18	advisor to the Secretary. And so his role was to	17:20:46
19	-- was to give the Secretary advice on matters	17:20:58
20	related to the military and the Department of	17:21:00
21	Defense and so forth.	17:21:04
22	My only recollection of him getting	17:21:06
23	involved in TPS discussions was in the way we've	17:21:09
24	already seen regarding Haiti.	17:21:13
25	Q. Do you know David Glawe or Glawe,	17:21:15

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1	G-l-a-w-e?	17:21:25
2	A. Yes. Glawe, G-l-a-w-e.	17:21:25
3	Q. And did he have an involvement with TPS,	17:21:28
4	to your knowledge?	17:21:31
5	A. So Mr. Glawe was during my time there an	17:21:42
6	undersecretary handling counterterrorism issues.	17:21:45
7	And so he was present at a lot of meetings, but he	17:21:49
8	wouldn't have been someone who would take the lead	17:21:56
9	on issues related to TPS.	17:21:58
10	Q. Now, at USCIS, did you know Kaitlin	17:22:15
11	Stoddard?	17:22:19
12	A. I believe I knew Kaitlin Stoddard in a	17:22:19
13	different -- in a different role. I believe she	17:22:23
14	came over and became a member of the Secretary's	17:22:24
15	staff either as a counsellor or as a counsellor to	17:22:27
16	the Deputy Secretary, I believe. I don't recall	17:22:31
17	knowing her at USCIS.	17:22:33
18	Q. Your recollection is that she had a role	17:22:35
19	with the DHS Secretary during the time that you	17:22:38
20	were at DHS?	17:22:42
21	A. If I'm thinking of the right person, I	17:22:44
22	believe she came over and became a counsellor to	17:22:49
23	the Deputy Secretary, I believe.	17:22:51
24	Q. Do you recall roughly when she became a	17:22:53
25	counsellor to the Deputy Secretary?	17:22:55

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1	A. I don't.	17:22:57
2	Q. Do you recall her having any role in TPS determinations?	17:22:57 17:23:00
4	A. I don't.	17:23:01
5	Q. Do you know Lora Ries, R-i-e-s, Lora,	17:23:02
6	L-o-r-a?	17:23:22
7	A. No.	17:23:23
8	Q. We're going to return to what we had previously marked as Exhibit 51, but with a better copy. And I'll give you a moment to review the article. The article is entitled "White House Chief of Staff Tried to Pressure Acting DHS Secretary to Expel Thousands of Hondurans, Officials Say."	17:24:46 17:24:49 17:24:52 17:24:54 17:24:57 17:25:00 17:25:45
15	A. Okay.	17:25:46
16	Q. So the first paragraph of this article says, "As the Department of Homeland Security prepared to extend the residency permits of tens of thousands of Hondurans living in the United States, White House Chief of Staff John F. Kelly called Acting Secretary Elaine Duke to pressure her to expel them, according to current and former administration officials."	17:25:46 17:25:53 17:25:58 17:26:02 17:26:07 17:26:10 17:26:12 17:26:12
24	Actually, I'm going to leave that aside, because I think we spoke about that previously.	17:26:12 17:26:12

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1	The next sentence reads, "Duke refused to	17:26:17
2	reverse her decision and was angered by what she	17:26:21
3	felt was a politically driven intrusion by Kelly	17:26:23
4	and Tom Bossert, the White House Homeland Security	17:26:27
5	advisor who also called her about the matter."	17:26:31
6	Do you know who Tom Bossert is?	17:26:35
7	A. Yes.	17:26:38
8	Q. Were you aware of a phone call from Tom	17:26:42
9	Bossert to then Acting Secretary Duke concerning	17:26:44
10	TPS for Honduras around this time?	17:26:50
11	MR. KIRSCHNER: Ambassador Nealon, feel	17:26:53
12	free to answer the question about whether a call	17:27:07
13	took place, but to the extent that questions about	17:26:57
14	the contents of that call -- to the extent you	17:27:00
15	know, I would instruct you not to answer on	17:27:03
16	deliberative process grounds.	17:27:05
17	A. So, yes, I heard that there was a call	17:27:10
18	from Mr. Bossert to Elaine Duke, but I didn't have	17:27:18
19	firsthand knowledge of such a call.	17:27:24
20	Q. Who informed you that there was a call	17:27:26
21	from Mr. Bossert to Secretary Duke?	17:27:28
22	A. I don't recall.	17:27:31
23	Q. Do you recall how Secretary Duke responded	17:27:31
24	to the call from the White House about the TPS	17:27:39
25	determination for Honduras?	17:27:46

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1	MR. KIRSCHNER: Again, Ambassador Nealon,	17:27:47
2	to the extent this question calls for internal	17:27:49
3	government deliberations, I would instruct you not	17:27:52
4	to answer.	17:27:55
5	THE WITNESS: Okay.	17:27:56
6	Q. Do you feel that you can answer that	17:27:56
7	question at all or not?	17:27:58
8	A. No.	17:28:00
9	MS. MacLEAN: So we'll save further	17:28:06
10	questions on this for -- following any court	17:28:08
11	decision on deliberative process privilege.	17:28:10
12	Q. Did you understand that there was any role	17:28:14
13	from the Department of Justice in TPS	17:28:21
14	determinations?	17:28:25
15	A. No. I'm not aware of any formal role that	17:28:26
16	the Department of Justice would play in TPS.	17:28:37
17	Q. Were you -- I'm going to ask you about a	17:28:39
18	number of nongovernmental organizations that have	17:28:48
19	expressed certain views on immigration, and with	17:28:51
20	regard to all of them, I wonder if you could	17:28:55
21	elaborate whether you know whether anyone at DHS is	17:28:58
22	in communication with these organizations or had	17:29:02
23	been in communication with these organizations with	17:29:04
24	regard to TPS.	17:29:07
25	Do you know whether anyone at DHS was in	17:29:09

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1	communication with anyone from the organization	17:29:12
2	FAIR, Federation for American Immigration Reform,	17:29:16
3	related to TPS?	17:29:20
4	A. I don't know.	17:29:22
5	Q. Do you know if anyone at DHS was in	17:29:22
6	communication with the organization or anyone from	17:29:26
7	the organization Center for Immigration Studies as	17:29:28
8	it related to TPS?	17:29:31
9	A. I don't know.	17:29:34
10	Q. Do you know whether anyone at DHS was in	17:29:34
11	communication with anyone from the organization	17:29:39
12	NumbersUSA in connection with TPS?	17:29:42
13	A. I don't know.	17:29:44
14	Q. With those -- with regard to those three	17:29:45
15	organizations, FAIR, Center for Immigration Studies	17:29:48
16	and NumbersUSA, were you aware whether anyone at	17:29:51
17	DHS was in communication with these organizations	17:29:55
18	or people from these organizations about	17:29:59
19	immigration issues more broadly?	17:30:01
20	A. So I certainly know who those	17:30:03
21	organizations are, and I do recall occasionally	17:30:06
22	hearing that someone had been in contact with the	17:30:15
23	Center for Immigration Studies, for example, but I	17:30:18
24	don't recall the specific circumstances under which	17:30:22
25	that would have taken place, and I don't recall	17:30:24

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1	hearing about any communication regarding TPS	17:30:31
2	specifically.	17:30:33
3	Q. And do you recall who -- you said that you	17:30:34
4	recall communications about engagement with TPS.	17:30:36
5	Do you recall who from DHS was engaged with those	17:30:39
6	organizations?	17:30:41
7	A. I don't.	17:30:42
8	Q. And then same question with regard to a	17:30:44
9	few people connected to those organizations.	17:30:47
10	Do you recall conversations while you were	17:30:50
11	at DHS about communications with Mark Krikorian	17:30:52
12	concerning immigration issues or TPS more	17:30:56
13	specifically?	17:30:59
14	A. No.	17:31:00
15	Q. Same question with regard to David North?	17:31:00
16	A. No.	17:31:04
17	Q. Same question with regard to Jessica	17:31:04
18	Vaughn?	17:31:07
19	A. No.	17:31:07
20	MS. MacLEAN: I think we're basically	17:31:57
21	done, but if you could just give us one moment to	17:31:59
22	connect to make sure there's nothing else before we	17:31:59
23	release you. We'll go off the record for a moment.	17:32:01
24	THE VIDEOGRAPHER: Time is 5:32. We're	17:32:01
25	off the record.	17:32:03

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1	(Proceedings interrupted at 5:32 p.m. and	17:32:04
2	reconvened at 5:38 p.m.)	17:32:05
3	THE VIDEOGRAPHER: Time is 5:38. We are	17:38:42
4	back on the record.	17:38:46
5	BY MS. MacLEAN:	17:38:47
6	Q. So just one last question for you,	17:38:47
7	Ambassador Nealon.	17:38:50
8	A. Sure.	17:38:50
9	Q. After you sent your memo concerning TPS	17:38:51
10	for El Salvador, Honduras, and Nicaragua to then	17:38:57
11	Acting Secretary Duke, did anyone communicate with	17:39:00
12	you about that memo?	17:39:04
13	A. I believe I heard from the Secretary	17:39:11
14	herself, thanks; and I think I heard from her Chief	17:39:17
15	of Staff, thanks, but I don't recall hearing from	17:39:21
16	anybody else.	17:39:25
17	Q. Okay.	17:39:25
18	MS. MacLEAN: And I have no further	17:39:29
19	questions at this time. As you know, the	17:39:30
20	deposition is open because there's an outstanding	17:39:32
21	question with regard to the deliberative process	17:39:35
22	privilege and, you know, what -- what can be	17:39:37
23	protected and what must be shared.	17:39:39
24	I just want to thank you for your time. I	17:39:41
25	know you're not working for the government anymore,	17:39:43

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1 so this is a long day, but we'll close the 17:39:46  
2 deposition for now but leave it open based on the 17:39:50  
3 outstanding questions that exist. 17:39:54

4 MR. KIRSCHNER: And the only thing I want 17:39:55  
5 to say on the record is per agreement with counsel, 17:39:57  
6 subject to Judge Chen, that to the extent this 17:40:00  
7 deposition is to be reopened, Judge Chen's order 17:40:06  
8 refers to August 20th, but that the parties have 17:40:09  
9 agreed that the deposition -- based on previous 17:40:13  
10 schedule conflicts, they would be fine with it 17:40:15  
11 being reopened on August 21st to the extent Judge 17:40:17  
12 Chen reopens this deposition. I just want to make 17:40:22  
13 sure that was a clear agreement on the record. 17:40:25

14 THE WITNESS: Thank you. 17:40:27

15 MR. KIRSCHNER: With that, I have no 17:40:27  
16 questions on my end and thank you for your time. 17:40:29

17 THE WITNESS: Thank you very much. 17:40:31

18 THE VIDEOGRAPHER: Time is 5:40. That 17:40:31  
19 concludes today's deposition. We're off the 17:40:36  
20 record. 17:40:38

21 (Whereupon, this deposition was concluded 17:40:39  
22 at 5:40 p.m.) 17:40:43

23

24

25

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1

CERTIFICATE OF REPORTER

2

I, Dana Welch, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause;

7

That said deposition was taken in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of the said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;

13

That before completion of the deposition, review of the transcript [X] was [ ] was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

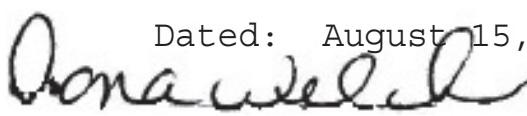
18

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

23

Dated: August 15, 2018.

24

  
\_\_\_\_\_  
Dana Welch, CSR, RPR, CRR, CRC

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1 Errata Sheet

2

3 NAME OF CASE: CRISTA RAMOS vs. KIRSTJEN NIELSEN

4 DATE OF DEPOSITION: 08/14/2018

5 NAME OF WITNESS: James D. Nealon

6 Reason Codes:

7 1. To clarify the record.

8 2. To conform to the facts.

9 3. To correct transcription errors.

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